

**DECLARATION OF  
JONATHAN McPHIE  
REGARDING  
GOOGLE'S  
DISCLOSURES**

**Redacted Version  
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8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

10 CHASOM BROWN, *et al.*, on behalf of  
11 themselves and all others similarly situated,

12 Plaintiffs,

13 vs.

14 GOOGLE LLC,

15 Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**DECLARATION OF JONATHAN  
MCPHIE REGARDING GOOGLE'S  
DISCLOSURES**

The Honorable Yvonne Gonzalez Rogers  
Courtroom 1 – 4th Floor

Date: September 20, 2022

Time: 2:00 p.m.

1 I, Jonathan McPhie, declare as follows:

2 1. I am a Group Product Manager for Google's Privacy and Data Protection Office  
3 ("PDPO") and have been in this role since September 8, 2020. Prior to that time, I have worked in  
4 a variety of teams across Google, including YouTube (identity and privacy), Search (results  
5 quality and personalization), and Identity (account systems and settings). I have been employed  
6 by Google since September 2007. In the regular course of my duties while at Google, I  
7 participated in the management of Google's framework for obtaining user consent, and I reviewed  
8 and approved related disclosures, including disclosure to users about Google's data collection  
9 practices. As a result of my role and responsibilities at Google, I am familiar with Google's  
10 processes for obtaining consent from Google Account holders and users of Google's various  
11 services. In particular, I am familiar with Google's processes for obtaining consent to the data  
12 Google receives when a user visits a Google website or a third-party website that uses certain  
13 Google services, such as Analytics and Ad Manager. Except where otherwise stated below, I  
14 make this declaration of personal knowledge, and if called and sworn as a witness, I could and  
15 would testify competently thereto.

16 2. I am informed that Plaintiffs are asking the Court to certify two classes:

17 **Class 1** - "All Chrome browser users with a Google account who accessed a non-Google  
18 website containing Google tracking or advertising code using such browser and who were  
19 (a) in 'Incognito mode' on that browser and (b) were not logged into their Google account  
20 on that browser, but whose communications, including identifying information and online  
21 browsing history, Google nevertheless intercepted, received, or collected from June 1,  
22 2016 through the present" (the "Class Period").

23 **Class 2** - "All Safari, Edge, and Internet Explorer browser users with a Google account  
24 who accessed a non-Google website containing Google tracking or advertising code using  
25 such browser and who were (a) in 'Incognito mode' on that browser and (b) were not  
26 logged into their Google account on that browser, but whose communications, including  
27 identifying information and online browsing history, Google nevertheless intercepted,  
28 received, or collected from June 1, 2016 through the present."

1 Dkt. 609 at 1.

2 3. I am informed that Incognito Mode provides privacy in three ways. *First*, websites  
3 visited while in Incognito mode are not saved in the user's Chrome browsing history, so that other  
4 people who use the same device cannot review it in Chrome's "History" tab. *Second*, Incognito  
5 mode automatically logs users out of their Google Account and any other website account. This  
6 means that so long as the user does not sign-in to those accounts during the session, the private  
7 browsing activity will not be stored in their Google Account and therefore is not linked to their  
8 identity (or other browsing activity). It also means that (again assuming the user does not sign-in)  
9 ads served to a user based on Google Account-keyed data in non-private modes are not  
10 personalized based on a user's browsing activity in Incognito mode. *Third*, in Incognito mode,  
11 Chrome does not share any existing cookies with the websites visited and any new cookies placed  
12 on the browser during an Incognito mode session are deleted once all Incognito mode windows are  
13 closed. This means that the data transmitted during private browsing sessions is not linked through  
14 cookies to data transmitted during regular browsing sessions, to the user's device, or to the user  
15 herself. It also ensures that data from a given private browsing session is not used, for example, to  
16 serve ads during any other session in any other mode (private or non-private).

17 4. Google's disclosures about Incognito mode, and private browsing generally, are  
18 consistent with the features I am informed Incognito mode provides (as described above). For  
19 example, the Incognito Screen states: "Now you can browse privately, and other people who use  
20 this device won't see your activity." Additionally, Google Help pages explain that "[y]our  
21 activity, like your location, might still be visible to: [w]ebsites you visit, including the ads and  
22 resources on those sites" and that "you might see search results and suggestions based on your  
23 location or other searches you've done during your current browsing session." And the Chrome  
24 Private Notice explains that "[s]ites may deposit new cookies on your system while you are in  
25 these modes, but they'll only be stored and transmitted until you close the last incognito or guest  
26 window."

27 5. I am informed that Plaintiffs allege Google improperly collected the following  
28 categories of information during the Class Period when users with a Google Account visited non-

1 Google websites that use certain Google web-services—such as Google Analytics and Google  
2 advertising services (the “Services”)—when those users were not logged into their Google  
3 Account and were browsing in Incognito mode or the private browsing modes offered by Safari,  
4 Edge, or Internet Explorer: (1) “[t]he ‘GET request’”; (2) “[t]he IP address of the user’s  
5 connection to the internet”; (3) “[i]nformation identifying the browser software that the use is  
6 using, including any ‘fingerprint’ data”; (4) “[a]ny ‘User-ID’ issued by the website to the user, if  
7 available”; (5) “[g]eolocation of the user, if available”; and (6) “[i]nformation contained in  
8 ‘Google cookies’” (the “Data”). Third Amended Complaint (“TAC”) ¶¶ 63, 192. Google  
9 discloses that it collects such Data in its Privacy Policy, Account Holder Agreements, and other  
10 disclosures described below. I am not aware of any Google disclosure stating that Incognito  
11 mode, or any other private browsing mode, would block all transmissions of Data to Google. As  
12 explained above, Google’s disclosures accurately described that Incognito mode provides privacy  
13 from others who use the same device, by not saving users’ activity to their browsing history, and  
14 prevents the sharing of pre-existing cookies, deletes any new cookies placed on the browser during  
15 the private browsing session when the session is closed, and logs the user out of her accounts by  
16 default.

17         6. In this declaration, I explain the various disclosures that Google makes available to  
18 Google Account holders about the Data collection that I understand to be at issue in this case. In  
19 section A, I describe the relevant portions of the Google Terms of Service. In Section B, I describe  
20 the relevant portions of the various versions of Google’s Privacy Policy that were in effect during  
21 the Class Period, and Help articles that are linked to the Privacy Policy. In section C, I describe  
22 the New Account Holder Agreements that were shown to some Plaintiffs and members of the  
23 proposed Class. In section D.1, I describe the relevant portions of the various versions of the  
24 Chrome Privacy Notice that were in effect during the Class Period, and Help articles that are  
25 linked to the Chrome Privacy Notice. In section D.2., I describe the relevant portions of the  
26 various versions of the Chrome Privacy Whitepaper that were available during the Class Period. In  
27 section D.3., I describe the Incognito Screen, and the Google Help pages that were linked from  
28 that screen during the Class Period. In section E, I describe relevant requirements Google has of its

1 Ads and Analytics customers to disclose their use of Google services, and examples of website  
2 privacy policies that do so. In section F, I describe the other ways in which users can see that  
3 Incognito does not block Google services, including Chrome developer tools, website pop-ups,  
4 and links from advertisements. In section G, I describe disclosures made by other browser  
5 publishers about their private browsing modes.

6 **A. Google Modified Its Terms Of Service Throughout The Class Period**

7 7. Google maintained a publicly available Terms of Service online throughout the  
8 Class Period. A true and correct copy of the Terms of Service can be viewed online at  
9 <https://policies.google.com/terms>, and true and correct copies of archived versions of the Terms of  
10 Service in effect throughout the Class Period can be viewed by clicking the “Archived versions”  
11 link at the top of the same page.

12 8. The Google Terms of Service in effect between April 14, 2014 and March 30, 2020  
13 contained a section titled “Our Warranties and Disclaimers.” This section stated:

14 We provide our Services using a commercially reasonable level of skill and care and we  
15 hope that you will enjoy using them. But there are certain things that we don’t promise  
about our Services.

16 OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS OR ADDITIONAL  
17 TERMS, NEITHER GOOGLE NOR ITS SUPPLIERS OR DISTRIBUTORS MAKE  
18 ANY SPECIFIC PROMISES ABOUT THE SERVICES. FOR EXAMPLE, WE DON’T  
19 MAKE ANY COMMITMENTS ABOUT THE CONTENT WITHIN THE SERVICES,  
THE SPECIFIC FUNCTIONS OF THE SERVICES, OR THEIR RELIABILITY,  
AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. WE PROVIDE THE  
SERVICES “AS IS”.

20 SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE  
21 IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR  
22 PURPOSE AND NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW,  
WE EXCLUDE ALL WARRANTIES.

23 9. The Terms of Service during that time period included a section titled “Liability for  
24 our services.” This section stated:

25 WHEN PERMITTED BY LAW, GOOGLE, AND GOOGLE’S SUPPLIERS AND  
26 DISTRIBUTORS, WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES,  
OR DATA, FINANCIAL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL,  
EXEMPLARY, OR PUNITIVE DAMAGES.

27 TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF GOOGLE,  
28 AND ITS SUPPLIERS AND DISTRIBUTORS, FOR ANY CLAIMS UNDER THESE

1 TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE  
2 AMOUNT YOU PAID US TO USE THE SERVICES (OR, IF WE CHOOSE, TO  
3 SUPPLYING YOU THE SERVICES AGAIN).

4 IN ALL CASES, GOOGLE, AND ITS SUPPLIERS AND DISTRIBUTORS, WILL NOT  
5 BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY  
6 FORESEEABLE.

7 10. These two paragraphs were modified in the Terms of Service Effective as of March  
8 31, 2020. This version has separate “Warranty,” “Disclaimers,” and “Liabilities” paragraphs:

9 **Warranty**

10 We provide our services using reasonable skill and care. If we don’t meet the quality level  
11 described in this warranty, you agree to tell us and we’ll work with you to try to resolve the  
12 issue.

13 **Disclaimers**

14 The only commitments we make about our services (including the content in the services,  
15 the specific functions of our services, or their reliability, availability, or ability to meet  
16 your needs) are (1) described in the Warranty section, (2) stated in the service-specific  
17 additional terms, or (3) provided under applicable laws. We don’t make any other  
18 commitments about our services.

19 And unless required by law, we don’t provide implied warranties, such as the implied  
20 warranties of merchantability, fitness for a particular purpose, and non-infringement.

21 **Liabilities**

22 ...

23 These terms only limit our responsibilities as allowed by applicable law. Specifically, these  
24 terms don’t limit Google’s liability for death or personal injury, fraud, fraudulent  
25 misrepresentation, gross negligence, or willful misconduct.

26 Other than the rights and responsibilities described in this section (In case of problems or  
27 disagreements), Google won’t be responsible for any other losses, unless they’re caused by  
28 our breach of these terms or service-specific additional terms.

11. Additionally, the Google Terms of Service in effect between April 14, 2014 and  
March 30, 2020 stated that:

Google’s [privacy policies](#) explain how we treat your personal data and protect your privacy  
when you use our Services. By using our Services, you agree that Google can use such  
data in accordance with our privacy policies.

12. The Terms of Service effective March 31, 2020 instead stated that

Besides these terms, we also publish a [Privacy Policy](#). Although it’s not part of these  
terms, we encourage you to read it to better understand how you can [update, manage,](#)  
[export, and delete your information.](#)

1 13. Finally, the current Terms of Service, effective January 5, 2022 says this:

2 Besides these terms, we also publish a [Privacy Policy](#). We encourage you to read it to  
3 better understand how you can [update, manage, export, and delete your information](#)

4 **B. Google's Privacy Policy Discloses That Google Receives Data When Users  
Visit Websites that Use Google's Services**

5 14. Google maintained a publicly available Privacy Policy online throughout the Class  
6 Period. A true and correct copy of the Privacy Policy can be viewed online at  
7 <https://policies.google.com/privacy>, and true and correct copies of archived versions of the Privacy  
8 Policy in effect throughout the Class Period can be viewed by clicking the "Archived versions"  
9 link at the top of the same page. Throughout the Class Period, internet users (whether or not they  
10 have a Google Account) could access the Privacy Policy by, among other things, searching for  
11 "Google Privacy Policy" in their preferred search engine, or by clicking on links to the Privacy  
12 Policy from the homepage or menu of other Google apps, websites, or products, in other Google  
13 disclosures, such as the Chrome Privacy Notice and Google's Terms of Service. A link to the  
14 Privacy Policy was also provided in the Account Holder Agreements that some of the Plaintiffs  
15 were shown and accepted.

16 15. The Privacy Policy discloses that Google collects the Data described in paragraph 5  
17 above when users visit websites that use Google Services. For example, the March 25, 2016  
18 Privacy Policy, which was in effect at the beginning of the Class Period, explained in relevant  
19 part:

20 We collect information to provide better services to all of our users – from figuring out  
21 basic stuff like which language you speak, to more complex things like which [ads you'll  
find most useful](#),<sup>1</sup> [the people who matter most to you online](#), or which YouTube videos  
22 you might like.

23 We collect information in the following ways:

- 24 ● **Information you give us.** For example, many of our services require you to sign up  
25 for a Google Account. When you do, we'll ask for [personal information](#), like your  
26 name, email address, telephone number or [credit card](#) to store with your account. If  
you want to take full advantage of the sharing features we offer, we might also ask

27 <sup>1</sup> The phrase "ads you'll find most useful" is blue and links to a definition at the bottom of the  
28 Privacy Policy that states: "For example, if you frequently visit websites and blogs about  
gardening, you may see ads related to gardening as you browse the web."



you to create a publicly visible [Google Profile](#), which may include your name and photo.

- **Information we get from your use of our services.** We [collect information](#) about the services that you use and how you use them, like when you watch a video on YouTube, visit a website that uses our advertising services, or [view and interact with our ads](#) and content. This information includes:

- **Device information**

We collect [device-specific information](#) (such as your hardware model, operating system version, [unique device identifiers](#), and mobile network information including phone number). Google may associate your [device identifiers](#) or [phone number](#) with your Google Account.

- **Log information**

When you use our services or view content provided by Google, we automatically collect and store certain information in [server logs](#). This includes:

- details of how you used our service, such as your search queries.
- telephony log information like your phone number, calling-party number, forwarding numbers, time and date of calls, duration of calls, SMS routing information and types of calls.
- [Internet protocol address](#).
- device event information such as crashes, system activity, hardware settings, browser type, browser language, the date and time of your request and referral URL.
- cookies that may uniquely identify your browser or your Google Account.

- **Location information**

When you use Google services, we [may collect and process information about your actual location](#). We use various technologies to determine location, including IP address, GPS, [and other sensors](#) that may, for example, provide Google with information on nearby devices, [Wi-Fi access points and cell towers](#).

- **Unique application numbers**

Certain services include a unique application number. This number and information about your installation (for example, the operating system type and application version number) may be sent to Google when you install or uninstall that service or when that service periodically contacts our servers, such as for automatic updates.

\*\*\*

- **Cookies and similar technologies**

1 We [and our partners](#) use various technologies to collect and store  
2 information when you visit a Google service, and this may include using  
3 [cookies or similar technologies](#) to identify your browser or device. We also  
4 use these technologies to collect and store information when you interact  
5 with services we offer to our partners, such as [advertising services](#) or  
6 Google features that may appear on other sites. Our Google Analytics  
product helps businesses and site owners analyze the traffic to their  
websites and apps. When used in conjunction with our advertising services,  
such as those using the DoubleClick cookie, Google Analytics information  
is [linked, by the Google Analytics customer or by Google, using Google  
technology, with information about visits to multiple sites.](#)

7 Information we collect when you are signed in to Google, in addition to information we  
8 obtain about you from partners, may be associated with your Google Account. When  
9 information is associated with your Google Account, we treat it as personal information.  
10 For more information about how you can access, manage or delete information that is  
11 associated with your Google Account, visit the [Transparency and choice](#) section of this  
12 policy.

13 16. The Privacy Policy also explains that Google uses the data to, among other things,  
14 give users “more relevant search results and ads.” The Privacy Policy also explains:

15 We use information collected from cookies and other technologies, like [pixel tags](#), to  
16 [improve your user experience](#) and the overall quality of our services. One of the products  
17 we use to do this on our own services is Google Analytics. For example, by saving your  
18 language preferences, we’ll be able to have our services appear in the language you prefer.  
19 When showing you tailored ads, we will not associate an identifier from cookies or similar  
20 technologies with [sensitive categories](#), such as those based on race, religion, sexual  
21 orientation or health.

22 17. The Privacy Policy also directs users to their settings, including signed-out settings:

23 [Review and update your Google activity controls](#) to decide what types of data, such as  
24 videos you’ve watched on YouTube or past searches, you would like saved with your  
25 account when you use Google services. You can also visit these [controls](#) to manage  
26 whether certain activity is stored in a cookie or similar technology on your device when  
27 you use our services while signed-out of your account.

28 18. The Privacy Policy does not state that using a private browsing mode will prevent  
Google from collecting the information described above. To the contrary, the Privacy Policy  
broadly describes Google’s collection when you use “our services,” which includes Chrome and  
its various modes, like Incognito mode. In fact, the Privacy Policy did not even mention Incognito  
mode specifically or private browsing modes generally before the version effective beginning May  
25, 2018.

1           19.     The Privacy Policy also directs readers to additional materials:

2           Further privacy and security related materials can be found through Google's [policies and](#)  
3           [principles pages](#), including:

- 4           • Information about our [technologies and principles](#), which includes, among other  
5           things, more information on
  - 6           ■ [how Google uses cookies](#).
  - 7           ■ technologies we use for [advertising](#).
  - 8           ■ how we [recognize patterns like faces](#).
- 9           • A [page](#) that explains what data is shared with Google when you visit websites that  
10           use our advertising, analytics and social products.

11           20.     The webpage hyperlinked to the word "page" in the final bullet takes users to  
12           <https://policies.google.com/technologies/partner-sites>, which explains "HOW GOOGLE USES  
13           INFORMATION FROM SITES OR APPS THAT USE OUR SERVICES." Attached as **Exhibit**  
14           **1** is a true and correct copy of the Help Center Article titled "HOW GOOGLE USES  
15           INFORMATION FROM SITES OR APPS THAT USE OUR SERVICE," which is also publicly  
16           available at <https://policies.google.com/technologies/partner-sites>. Specifically, that page explains:

17           Many websites and apps use Google services to improve their content and keep it free.  
18           When they integrate our services, these sites and apps share information with Google.

19           For example, when you visit a website that uses advertising services like AdSense,  
20           including analytics tools like Google Analytics, or embeds video content from YouTube,  
21           your web browser automatically sends certain information to Google. This includes the  
22           URL of the page you're visiting and your IP address. We may also [set cookies on your](#)  
23           [browser](#) or read cookies that are already there. Apps that use Google advertising services  
24           also share information with Google, such as the name of the app and a unique identifier for  
25           advertising.

26           Google uses the information shared by sites and apps to deliver our services, maintain and  
27           improve them, develop new services, measure the effectiveness of advertising, protect  
28           against fraud and abuse, and personalize content and ads you see on Google and on our  
29           partners' sites and apps. See our [Privacy Policy](#) to learn more about how we process data  
30           for each of these purposes and our [Advertising](#) page for more about Google ads, how your  
31           information is used in the context of advertising, and how long Google stores this  
32           information.

33           \*\*\*

34           Sometimes, when processing information shared with us by sites and apps, those sites and  
35           apps will ask for your consent before allowing Google to process your information. For  
36           example, a banner may appear on a site asking for consent for Google to process the  
37           information that site collects. When that happens, we will respect the purposes described in

1 the consent you give to the site or app, rather than the legal grounds described in the  
2 Google Privacy Policy. If you want to change or withdraw your consent, you should visit  
the site or app in question to do so.

3 \*\*\*

4 If ad personalization is turned on, Google will use your information to make your ads more  
5 useful for you. For example, a website that sells mountain bikes might use Google's ad  
6 services. After you visit that site, you could see an ad for mountain bikes on a different site  
that shows ads served by Google.

7 If ad personalization is off, Google will not collect or use your information to create an ad  
8 profile or personalize the ads Google shows to you. You will still see ads, but they may not  
9 be as useful. Ads may still be based on the topic of the website or app you're looking at,  
10 your current search terms, or on your general location, but not on your interests, search  
history, or browsing history. Your information can still be used for the other purposes  
mentioned above, such as to measure the effectiveness of advertising and protect against  
fraud and abuse.

11 When you interact with a website or app that uses Google services, you may be asked to  
12 choose whether you want to see personalized ads from ad providers, including Google.  
13 Regardless of your choice, Google will not personalize the ads you see if your ad  
personalization setting is off or your account is ineligible for personalized ads.

14 \*\*\*

15 Here are some ways you can control the information that is shared by your device when  
you visit or interact with sites and apps that use Google services:

16 \*\*\*

17 [Incognito mode in Chrome](#) allows you to browse the web without recording webpages and  
18 files in your browser or Account history (unless you choose to sign in). Cookies are  
deleted after you've closed all of your incognito windows and tabs, and your bookmarks  
and settings are stored until you delete them. Learn more about [cookies](#).

19  
20 21. As explained further below, the statements in this page about how Incognito  
21 works—*i.e.*, that Incognito mode allows you to “browse the web without recording webpages and  
22 files *in your browser or Account history (unless you choose to sign-in)*,” and that cookies placed  
23 on the browser during an Incognito session “are deleted *after* you’ve closed all of your incognito  
24 windows and tabs”—are accurate. This is exactly how Incognito mode works.

25 22. Similar to the March 25, 2016 Privacy Policy, the March 31, 2020 Privacy Policy,  
26 which was in effect when Plaintiffs filed the Complaint, explained, in relevant part:

27 We build a range of services that help millions of people daily to explore and interact with  
the world in new ways. Our services include:

- 28
- Google apps, sites, and devices, like Search, YouTube, and Google Home

- Platforms like the Chrome browser and Android operating system
- Products that are integrated into third-party apps and sites, like ads and embedded Google Maps<sup>2</sup>

\*\*\*

## INFORMATION GOOGLE COLLECTS

We want you to understand the types of information we collect as you use our services

We collect information to provide better services to all our users — from figuring out basic stuff like which language you speak, to more complex things like which [ads you'll find most useful](#), [the people who matter most to you online](#), or which YouTube videos you might like. The information Google collects, and how that information is used, depends on how you use our services and how you manage your privacy controls.

When you're not signed in to a Google Account, we store the information we collect with [unique identifiers](#) tied to the browser, application, or [device](#) you're using. This helps us do things like maintain your language preferences across browsing sessions.<sup>3</sup>

When you're signed in, we also collect information that we store with your Google Account, which we treat as [personal information](#).

\*\*\*

## Information we collect as you use our services

### Your apps, browsers & devices

We collect information about the apps, browsers, and [devices](#) you use to access Google services, which helps us provide features like automatic product updates and dimming your screen if your battery runs low.

The information we collect includes [unique identifiers](#), browser type and settings, device type and settings, operating system, mobile network information including carrier name and phone number, and application version number. We also collect information about the interaction of your apps, browsers, and devices with our services, including [IP address](#), crash reports, system activity, and the date, time, and referrer URL of your request.

We collect this information when a Google service on your device contacts our servers — for example, when you install an app from the Play Store or when a service checks for automatic updates. If you're using an [Android device with Google](#) apps, your device periodically contacts Google servers to provide information about your device and connection to our services. This information includes things like your device type, carrier name, crash reports, and which apps you've installed.

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<sup>2</sup> The current version of the Privacy Policy includes “Products that are integrated into third-party apps and sites, like ads, analytics, and embedded Google Maps.”

<sup>3</sup> The current version of the Privacy Policy has added to this sentence and states: “This allows us to do things like maintain your preferences across browsing sessions, such as your preferred language or whether to show you more relevant search results or ads based on your activity.”

## Your activity

We collect information about your activity in our services, which we use to do things like recommend a YouTube video you might like. The activity information we collect may include:

- Terms you search for
- Videos you watch
- [Views and interactions with content and ads](#)
- Voice and audio information when you use audio features
- Purchase activity
- People with whom you communicate or share content
- Activity on third-party sites and apps that use our services
- Chrome browsing history you've [synced with your Google Account](#)

\*\*\*

## Your location information

We collect information about your location when you use our services, which helps us offer features like driving directions for your weekend getaway or showtimes for movies playing near you.

Your location can be determined with varying degrees of accuracy by:

- GPS
- [IP address](#)
- [Sensor data from your device](#)
- [Information about things near your device](#), such as Wi-Fi access points, cell towers, and Bluetooth-enabled devices

The types of location data we collect depend in part on your device and account settings. For example, you can [turn your Android device's location on or off](#) using the device's settings app. You can also turn on [Location History](#) if you want to create a private map of where you go with your signed-in devices.

\*\*\*

We use various technologies to collect and store information, including [cookies](#), [pixel tags](#), local storage, such as [browser web storage](#) or [application data caches](#), databases, and [server logs](#).



23. This version of the Privacy Policy also stated that “[t]here are over 2 million non-Google websites and apps that partner with Google to show ads. [Learn more.](#)”

24. Like the March 25, 2016 Privacy Policy, and all iterations of the Privacy Policy in effect during the Class Period, the March 31, 2020 Privacy Policy explains that Google uses the data it collects to, among other things, personalize ads:

**Provide personalized services, including content and ads**

We use the information we collect to customize our services for you, including providing recommendations, personalized content, and [customized search results](#)....<sup>4</sup>

\*\*\*

Depending on your settings, we may also show you personalized ads based on your interests. For example, if you search for “mountain bikes,” you may see an ad for sports equipment when you’re browsing a site that shows ads served by Google. You can control what information we use to show you ads by visiting your ad settings.....

[Go to Ad Settings](#)

\*\*\*

When you’re signed out, you can manage information associated with your browser or device, including:

- Signed-out search personalization: [Choose](#) whether your search activity is used to offer you more relevant results and recommendations.
- YouTube settings: Pause and delete your [YouTube Search History](#) and your [YouTube Watch History](#).
- Ad Settings: [Manage](#) your preferences about the ads shown to you on Google and on sites and apps that partner with Google to show ads.

\*\*\*

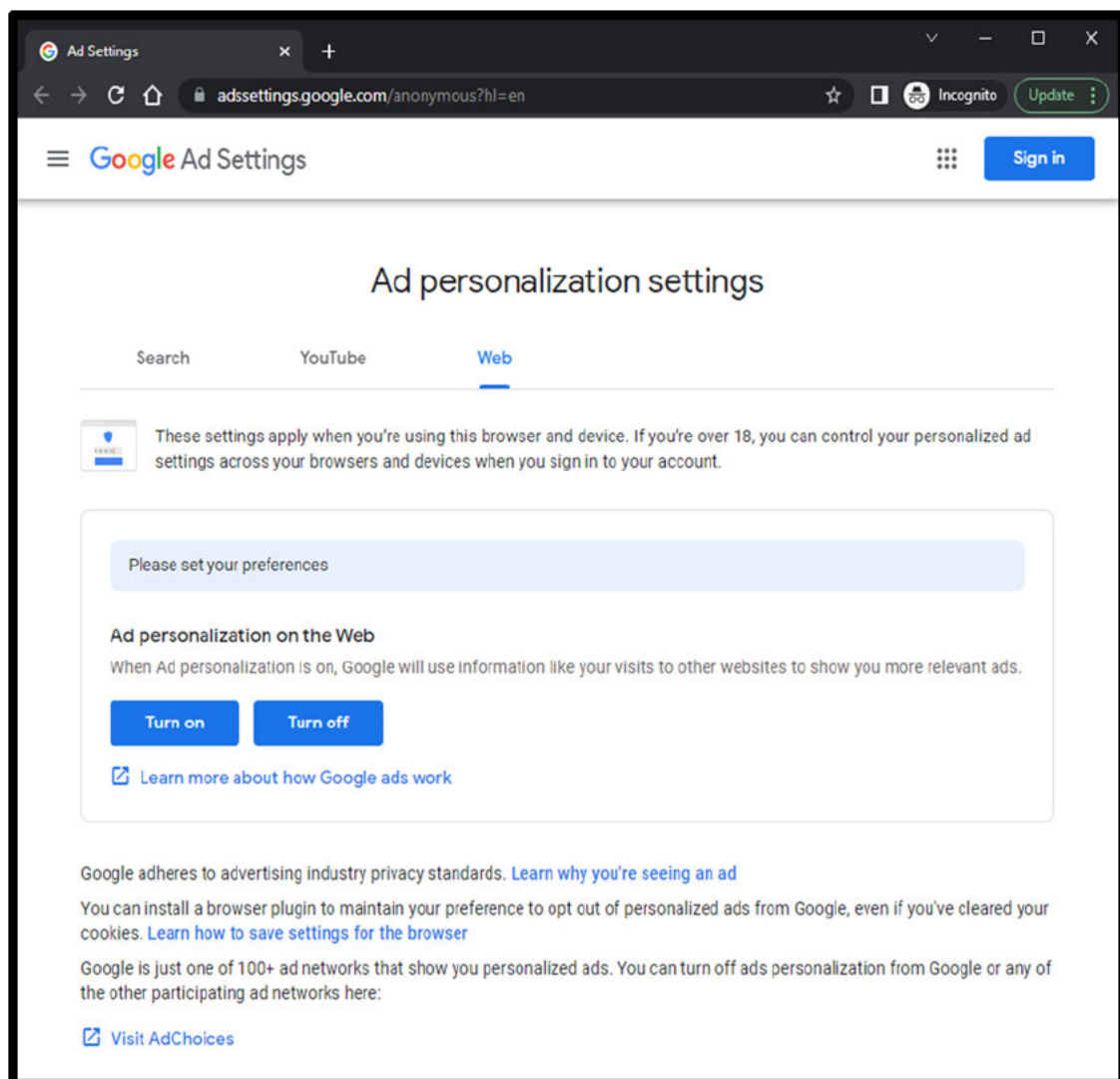
There are other ways to control the information Google collects whether or not you’re signed in to a Google Account, including:

---

<sup>4</sup> Since the May 25, 2018 version of the Privacy Policy, clicking on “customized search results” links to a definition at the bottom of the Privacy Policy that states: “For example, when you’re signed in to your Google Account and have the Web & App Activity control enabled, you can get more relevant search results that are based on your previous searches and activity from other Google services. You can [learn more here](#). You may also get customized search results even when you’re signed out. If you don’t want this level of search customization, you can [search and browse privately](#) or turn off [signed-out search personalization](#).” Clicking on “search and browse private” takes users to the “Search & Browse Privately page discussed below.

- Browser settings: For example, you can configure your browser to indicate when Google has set a [cookie](#) in your browser. You can also configure your browser to block all cookies from a specific domain or all domains. But remember that our services [rely on cookies to function properly](#), for things like remembering your language preferences.
- Device-level settings: Your device may have controls that determine what information we collect. For example, you can [modify location settings](#) on your Android device.

25. As described above, Google provides signed-out users, including those browsing in Incognito mode, with the option to turn Ads Personalization off, which prevents Google from using information from that user's browsing for advertising. The image below is a true and correct copy of a screenshot of the current signed-out ad personalization setting, visited in Incognito mode, which is publicly available at <https://adssettings.google.com/>.





1           26.     Like the March 25, 2016 Privacy Policy, the March 31, 2020 Privacy Policy does  
2 not suggest that browsing in Incognito Mode in particular, or private browsing mode in general,  
3 will prevent Google from receiving the disputed data when a user visits third-party sites that use  
4 Google Services. Like the preceding versions of the Privacy Policy, the March 31, 2020 Privacy  
5 Policy says Google collects the data when you use “our services,” which includes “the Chrome  
6 browser.”

7           27.     The only mention in the March 31, 2020 Privacy Policy of private browsing or  
8 Incognito Mode, identifies Incognito mode as one way users can “manage [their] privacy”:

9           You can use our services in a variety of ways to manage your privacy. For example, you  
10 can sign up for a Google Account if you want to create and manage content like emails and  
11 photos, or see more relevant search results. And you can use many Google services when  
12 you’re signed out or without creating an account at all, like searching on Google or  
watching YouTube videos. You can also choose to browse the web privately using Chrome  
in Incognito mode.<sup>5</sup> And across our services, you can adjust your privacy settings to  
control what we collect and how your information is used.

13           28.     I am informed that Plaintiffs are basing their claims, in part, on the sentence “You  
14 can also choose to browse the web privately using Chrome in Incognito mode.” This sentence  
15 first appeared in the Privacy Policy effective May 25, 2018. As the sentence at the beginning of  
16 the paragraph states, Incognito mode is simply one of “a variety of ways to manage your privacy”  
17 generally. Incognito mode provides privacy in the manner described above in paragraph 3. This  
18 paragraph in the Privacy Policy also refers to other ways of managing privacy that provide  
19 different degrees of privacy—*e.g.*, using Google services “when you’re signed out” of a Google  
20 Account, in which case the data Google collects is associated with a delete-able and  
21 pseudonymous cookie, rather than with a Google Account (which may contain information  
22 reflecting the user’s identity). Neither this sentence nor any other sentence in Google’s Privacy  
23 Policies from the date Plaintiffs filed the complaint back to the start of the class period makes any  
24 reference to private browsing modes in non-Chrome browsers.

25  
26  
27  
28           <sup>5</sup> This sentence was added in the May 25, 2018 version of the Privacy Policy. In the current  
version of the Privacy Policy, this sentence reads: “You can also choose to browse the web in a  
private mode, like Chrome Incognito mode.”

1           29. I am further informed that Plaintiffs are basing their claims, in part, on the sentence  
2 “And across our services, you can adjust your privacy settings to control what we collect and how  
3 your information is used.” This sentence also first appeared in the Privacy Policy effective May  
4 25, 2018. The sentence does not refer to Chrome or Incognito mode specifically; rather, it refers  
5 to the fact that Google has many services, each with its own variety of privacy settings that may be  
6 used to affect the information Google collects and how the information is used. Chrome, for  
7 example, has a variety of privacy settings, including cookie blocker settings, sign-in and Sync  
8 modes, and Incognito and Guest modes, which affect the data Google collects and/or how the data  
9 is used.

10           30. Neither of these sentences should be interpreted to mean that Incognito mode  
11 prevents Google from collecting the data that the Privacy Policy makes clear Google receives to  
12 provide its analytics and advertising services.

13           31. Google keeps statistics on how many times its Privacy Policy and other disclosure  
14 pages are viewed and how much time users spent on the page. I have consulted these records, and  
15 they show that Google’s Privacy Policy was viewed more than [REDACTED] times by U.S.-based  
16 users between March 23, 2018 (the date Google started collecting this data) and July 27, 2020 (the  
17 date the related *Calhoun* complaint was filed). On average during this same time period, users  
18 spent [REDACTED] reviewing the Privacy Policy. Attached hereto as  
19 **Exhibit 2** is a true and correct copy of a screenshot of the Google system that measures these  
20 statistics that Google produced as GOOG-CABR-05424608.

21           32. Like the March 25, 2016 Privacy Policy, the March 31, 2020 Privacy Policy (and  
22 all versions in between), provided a link to the page titled “How Google uses information from  
23 sites or apps that use our services” that is described above in paragraph 20. Google’s records  
24 show that the “How Google uses information from sites or apps that use our services” webpage  
25 was viewed more than [REDACTED] times between March 23, 2018 (the date Google started collecting  
26 this data) and July 27, 2020 by U.S.-based users. Attached hereto as **Exhibit 3** is a true and  
27 correct copy of a screenshot of the Google system that measures these statistics that Google  
28 produced as GOOG-CABR-05424610.

C. **Users Creating New Google Accounts During The Class Period Agreed to New Account Creation Agreements That Specifically Disclose Google's Receipt of the Disputed Data Through The Services**

33. Users signing up for a new Google Account are required to view the New Account Creation Agreement.

34. Users creating new accounts prior to 2013 were shown a New Account Creation Agreement that told users to “review the Terms of Service below” and that “[w]ith Gmail, you won’t see blinking banner ads. Instead we display ads you might find useful that are relevant to the content of your messages.” The Agreement then stated “By clicking on ‘I accept’ below you are agreeing to the Terms of Service [which was hyperlinked and also included directly on the screen] above and both the Program Policy [which was hyperlinked] and the Privacy Policy [which was also hyperlinked].” To create an account, users were required to select “I accept. Create my account.” Attached hereto as **Exhibit 4** is a true and correct copy of a New Account Creation Agreement from before 2013 that Google produced as GOOG-CABR-04981576.

35. Users creating new accounts between 2013 and June 2016 were shown a modified New Account Creation Agreement. This screen required users to select that they “agree to the Google Terms of Service [which was hyperlinked] and Privacy Policy [which was also hyperlinked].” I agree to the Google Terms of Service and Privacy Policy Attached hereto as **Exhibit 5** is a true and correct copy of the New Account Creation Agreement from approximately 2013-June 2016 that Google produced as GOOG-CABR-04981575.

36. Beginning in or around June 2016, Google updated its New Account Creation Agreement. Attached hereto as **Exhibit 6** is a true and correct copy of a presentation showing the launched user experience for the Consent Bump and New Account Creation Agreements that Google produced as GOOG-CABR-04067825-67. Unless stated otherwise, the screenshots pasted in this section are taken from Exhibit 6. However, as further explained below, Google has also produced—and I enclose as exhibits herein—true and correct copies of printouts of the precise text of the New Account Creation Agreements shown to each Plaintiff, where applicable.

37. First, the New Account Creation screen was modified so that the checkbox for “I agree to the Google Terms of Service and Privacy Policy” was removed from the page where users enter in their information:

Ex. 6 at GOOG-CABR-04067829.

///

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38. After the user input the required information and selected "Next step," the user was shown the updated New Account Creation Agreement:

The screenshot shows a "Privacy and Terms" screen with the following content:

## Privacy and Terms

By choosing "I agree" below you agree to Google's [Terms of Service](#).

You also agree to our [Privacy Policy](#), which describes how we process your information, including these key points:

---

### Data we process when you use Google

- When you use Google services to do things like write a message in Gmail or comment on a YouTube video, we store the information you create.
- When you search for a restaurant on Google Maps or watch a video on YouTube, for example, we process information about that activity – including information like the video you watched, device IDs, IP addresses, cookie data, and location.
- We also process the kinds of information described above when you use apps or sites that use Google services like ads, Analytics, and the YouTube video player.

Depending on your account settings, some of this data may be associated with your Google Account and we treat this data as personal information. You can control how we collect and use this data at My Account ([myaccount.google.com](https://myaccount.google.com)).

### Why we process it

We process this data for the purposes described in [our policy](#), including to:

- Help our services deliver more useful, customized content such as more relevant search results;
- Improve the quality of our services and develop new ones;
- Deliver personalized ads, both on Google services and on sites and apps that partner with Google;
- Improve security by protecting against fraud and abuse; and
- Conduct analytics and measurement to understand how our services are used.

### Combining data

We also combine data among our services and across your devices for these purposes. For example, we show you ads based on information from your use of Search and Gmail, and we use data from trillions of search queries to build spell-correction models that we use across all of our services.

At the bottom, there are two buttons: "CANCEL" and "I AGREE".

Ex. 6 at GOOG-CABR-04067829-30.

1           39.     The New Account Creation Agreement states: “By choosing ‘**I agree**’ below you  
2 agree to Google’s Terms of Service. You also agree to our Privacy Policy, which describes how  
3 we process your information, including these key points....” The phrases “Terms of Service” and  
4 “Privacy Policy” linked to the then-current versions of Google’s Terms of Service and Privacy  
5 Policy.

6           40.     The New Account Creation Agreement disclosed the “Data we process when you  
7 use Google.” Specifically, the screen explained:

8           When you search for a restaurant on Google Maps or watch a video on YouTube, for  
9 example, we process information about that activity—*including information like the video  
you watched, device IDs, IP address, cookie data, and location.*

10           *We also process the kinds of information described above when you use apps or sites  
that use Google services like ads, Analytics, and the YouTube video player.*

11           Depending on your account settings, some of this data may be associated with your Google  
12 Account and we treat this data as personal information. You can control how we collect  
13 and use this data at My Account (myaccount.google.com).

14           *Id.* (emphasis added).

15           41.     The New Account Creation Agreement also explains that Google uses the data for a  
16 variety of purposes, including to “[d]eliver personalized ads, . . . both on Google services and on  
17 sites and apps that partner with Google.”

18           ///

19           ///

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27           ///

28           ///



42. In May 2018, Google modified the New Account Creation Agreement in several ways. Attached hereto as **Exhibit 7** are true and correct copies of screenshots taken of the New Account Creation Agreement in or around May 2020 that Google produced as GOOG-CABR-04067873-74:

**Google**

## Privacy and Terms

You're in control of the data we collect & how it's used

To create a Google Account, you'll need to agree to the [Terms of Service](#) below. In addition, when you create an account, we process your information as described in our [Privacy Policy](#), including these key points:

**Data we process when you use Google**

- When you set up a Google Account, we store information you give us like your name, email address, and telephone number.
- When you use Google services to do things like write a message in Gmail or comment on a YouTube video, we store the information you create.
- When you search for a restaurant on Google Maps or watch a video on YouTube, for example, we process information about that activity – including information like the video you watched, device IDs, IP addresses, cookie data, and location.
- We also process the kinds of information described above when you use apps or sites that use Google services like ads, Analytics, and the YouTube video player.

**Why we process it**

We process this data for the purposes described in [our policy](#), including to:

- Help our services deliver more useful, customized content such as more relevant search results;
- Improve the quality of our services and develop new ones;
- Deliver personalized ads, depending on your account settings, both on Google services and on sites and apps that partner with Google;
- Improve security by protecting against fraud and abuse; and
- Conduct analytics and measurement to understand how our services are used. We also have partners that measure how our services are used. [Learn more](#) about these specific advertising and measurement partners.

**Combining data**

We also combine this data among our services and across your devices for these purposes. For example, depending on your account settings, we show you ads based on information about your interests, which we can derive from your use of Search and YouTube, and we use data from trillions of search queries to build spell-correction models that we use across all of our services.

**You're in control**

Depending on your account settings, some of this data may be associated with your Google Account and we treat this data as personal information. You can control how we collect and use this data now by clicking "More Options" below. You can always adjust your controls later or withdraw your consent for the future by visiting [My Account](#) (myaccount.google.com).

[MORE OPTIONS](#)

[Cancel](#) [I agree](#)

1           43.     First, the top of the screen was modified to say: “To create a Google Account,  
2 you’ll need to agree to the Terms of Service below. In addition, when you create an account, we  
3 process your information as described in our Privacy Policy, including these key points: ... ” Like  
4 the prior version, the phrases “Terms of Service” and “Privacy Policy” linked to the then-current  
5 versions of Google’s Terms of Service and Privacy Policy.

6           44.     Second, Google added the “Learn More” link which brought users to  
7 <https://policies.google.com/privacy/google-partners> which explains the data collection at issue  
8 here and states that “over 2 million non-Google websites and apps partner with Google to show  
9 ads.”

10          45.     Third, Google added a paragraph at the end (“You’re in control”) and a “MORE  
11 OPTIONS” link to make it easier for users to adjust their settings and control the data associated  
12 with their Google Accounts. Attached hereto as **Exhibit 8** are true and correct copies of  
13 screenshots taken of the “MORE OPTIONS” dropdown in or around September 2019 that Google  
14 produced as GOOG-CABR-04067875-80.

15          46.     In order to create an account, users had to click the “I AGREE” button at the  
16 bottom of the New Account Creation Screen.

17          47.     Google records confirm that Plaintiffs Jeremy Davis and Chasom Brown each  
18 created at least one Google Account after June 2016. Both of these Plaintiffs were presented with  
19 the New Account Creation Agreement and selected “I AGREE.”

20          48.     I am informed that Plaintiff Davis represented that he has a Google account  
21 associated with the email address [REDACTED]. Attached hereto as **Exhibit 9** is a true and  
22 correct copy of a Google record that Google produced as GOOG-BRWN-00030922 that shows  
23 that account was created on [REDACTED]. Attached hereto as **Exhibit 10** is a true and correct  
24 copy of a Google record that Google produced as GOOG-BRWN-00708085 – 92 that shows  
25 Davis viewed the New Account Creation Agreement on [REDACTED] and that he selected “I  
26 AGREE.” Attached hereto as **Exhibit 11** is a true and correct copy of a record Google produced  
27 as GOOG-BRWN-00708167 that shows the text of the New Account Creation Agreement that  
28 was shown to Davis, and to which Davis selected “I AGREE.”



1           49. I am informed Plaintiff Brown represented that he has a Google account associated  
2 with the email address [REDACTED]. Attached hereto as **Exhibit 12** is a true and  
3 correct copy of a Google record that Google produced as GOOG-BRWN-00229498-500 that  
4 shows that account was created on [REDACTED]. Attached hereto as **Exhibit 13** is a true and  
5 correct copy of a Google record that Google produced as GOOG-BRWN-00708058 – 66 that  
6 shows Brown viewed the New Account Creation Agreement on [REDACTED], and that he  
7 selected “I AGREE.” Attached hereto as **Exhibit 14** is a true and correct copy of a record Google  
8 produced as GOOG-BRWN-00708165-66 that shows the text of the New Account Creation  
9 Agreement shown to Brown, and to which Brown selected “I AGREE.”

10           50. [REDACTED] of U.S.-based accounts were created after users selected “I  
11 AGREE” to the New Account Creation Agreement. Attached hereto as **Exhibit 15** is a true and  
12 correct copy of a screenshot of the Google system that measures these statistics that Google  
13 produced as GOOG-CABR-05435660.

14           51. The other Plaintiffs, and [REDACTED] of other Class Members, who created Google  
15 accounts prior to June 2016 would not have seen these screens.

16           **D. Google’s Disclosures Relating to Incognito Mode**

17           52. As described above, Google discloses that it receives the data at issue when users  
18 visit non-Google websites that use Google services. In other documents described below, Google  
19 describes the purpose and functionality of Incognito mode and/or private browsing modes  
20 generally. None of these documents represents that Incognito or other private browsing modes  
21 prevent Google from receiving the data used to provide its advertising and analytics services.

22           **1. The Chrome Privacy Notice**

23           53. I understand that Plaintiffs allege the Chrome Privacy Notice is part of their  
24 contract with Google. TAC ¶ 268. Google’s Chrome Privacy Notice currently identifies five  
25 modes in which Chrome may be used (Basic, Sign-In, Sync, Guest, and Incognito). True and  
26 correct copies of the current and archived versions of the Chrome Privacy Notice are publicly  
27 available at: <https://www.google.com/chrome/privacy/>.

1           54. The May 20, 2020 Chrome Privacy Notice, in effect at the time Plaintiffs' filed the  
2 Complaint, defines "Chrome" as "refer[ring] to all the products in the Chrome family listed  
3 above."<sup>6</sup> The Chrome Privacy Notice uses the terms Chrome and Google differently. For example,  
4 the May 20, 2020 Chrome Privacy Notice states that "Chrome periodically sends information to  
5 Google to check for updates, get connectivity status, validate the current time, and estimate the  
6 number of active users." And the Chrome Privacy Notices in effect between June 21, 2016 and  
7 October 23, 2018 states that "You can stop Chrome from accepting cookies from Google or other  
8 sites."

9           55. The May 20, 2020 Chrome Privacy Notice also explains that in Incognito mode:

10 You can limit the information Chrome stores on your system by using [incognito mode](#) or  
11 [guest mode](#). In these modes, Chrome won't store certain information, such as:

- 12           • Basic browsing history information like URLs, cached page text, or IP addresses of  
13 pages linked from the websites you visit
- 14           • Snapshots of pages that you visit
- 15           • Records of your downloads, although the files you download will still be stored  
16 elsewhere on your computer or device

17 \*\*\*

18 Cookies. Chrome won't share existing cookies with sites you visit in incognito or guest  
19 mode. Sites may deposit new [cookies](#) on your system while you are in these modes, but  
20 they'll only be stored and transmitted until you close the last incognito or guest window.

21 \*\*\*

22 Profile information. In incognito mode, you will still have access to information from your  
23 existing profile, such as suggestions based on your browsing history and saved passwords,  
24 while you are browsing. In guest mode, you can browse without seeing information from  
25 any existing profiles.

26           56. This page makes clear that Incognito mode allows a user to "limit the information  
27 Chrome [*i.e.*, the user's browser] stores on *your system*." It also makes clear that cookies may still  
28 be placed on a user's browser *during* an Incognito session, and will be deleted when the user  
*closes* "the last incognito window."

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<sup>6</sup> In contrast, Google defines "Google" in the Terms of Service and Privacy Policy as "Google LLC and its affiliates."

1           57. The text “incognito mode or guest mode” is hyperlinked and directs users to the  
2 “Browse in Private” help page. Attached as **Exhibit 16** is a true and correct copy of the Help  
3 Center Article titled “Browse in Private,” which is also publicly available at  
4 <https://support.google.com/chrome/answer/95464>. The “Browse in private” page similarly  
5 explains “[w]hat happens when you browse privately” including that “Chrome won’t save your  
6 browsing history, cookies and site data, or information entered in to forms,” and “[y]our activity  
7 isn’t hidden from websites you visit, your employer or school, or your internet service provider.”  
8 The “Browse in Private” help page was viewed nearly [REDACTED] times between August 1, 2016  
9 (the month the page was created) to January 1, 2022 (the most recent statistic as of the date the  
10 data was pulled) by U.S.-based users. Attached hereto as **Exhibit 17** is a true and correct copy of  
11 an export from the Google system that measures these statistics that Google produced as GOOG-  
12 CABR-05876957.

13           58. The “Browse in Private” help page directs users to “Learn more about [how private](#)  
14 [browsing works](#).” Clicking on the “how private browsing works” hyperlink referenced above takes  
15 users to the “How private browsing works in Chrome” page. Attached as **Exhibit 18** is a true and  
16 correct copy of the Help Center Article titled “How private browsing works in Chrome,” which is  
17 also publicly available at <https://support.google.com/chrome/answer/7440301>. The “How private  
18 browsing works in Chrome” page explains that:

19           When you browse privately, other people who use the device won't see your history.

20           Chrome doesn't save your browsing history or information entered in forms. Cookies and  
21 site data are remembered while you're browsing, but deleted when you exit Incognito  
22 mode. You can choose to block third-party cookies when you open a new incognito  
23 window. [Learn more about cookies](#).

24           \*\*\*

#### 25           **Your activity might still be visible**

26           Incognito mode stops Chrome from saving your browsing activity to your local history.  
27 Your activity, like your location, might still be visible to:

- 28           • Websites you visit, including the ads and resources used on those sites
- Websites you sign in to
- Your employer, school, or whoever runs the network you’re using

- Your internet service provider
- Search engines
  - Search engines may show search suggestions based on your location or activity in your current Incognito browsing session. When you search on Google, Google will always estimate the general area that you're searching from. [Learn more about location when you search on Google.](#)

### Some of your info might still be visible

A web service, website, search engine, or provider may be able to see:

- Your IP address, which can be used to identify the general area you're in
- Your activity when you use a web service
- Your identity if you sign in to a web service, like Gmail

59. The “How private browsing works in Chrome” help page was viewed more than [REDACTED] times between July 1, 2017 (the month the page was created) to January 1, 2022 (the most recent statistic as of the date the data was pulled) by U.S.-based users. Attached hereto as Exhibit 17 is a true and correct copy of an export from the Google system that measures these statistics that Google produced as GOOG-CABR-05876957.

60. The text “cookies” in paragraph 55 above is hyperlinked to a definition of cookies within the Chrome Privacy Notice, which states:

A cookie is a small file containing a string of characters that is sent to your computer when you visit a website. When you visit the site again, the cookie allows that site to recognize your browser. Cookies may store user preferences and other information. You can configure your browser to refuse all cookies or to indicate when a cookie is being sent. However, some website features or services may not function properly without cookies. Learn more about [how Google uses cookies](#) and how Google uses data, including cookies, [when you use our partners' sites or apps](#).

61. Clicking on the “how Google uses cookies” hyperlink takes users to the “How Google uses cookies” help center article. Attached as **Exhibit 18** is a true and correct copy of the Help Center Article titled “How Google uses cookies,” which is also publicly available at <https://policies.google.com/technologies/cookies?hl=en-US>. This page explains that:

Google Chrome also has Incognito mode, which doesn’t store your Chrome history of visited sites or cookies on your device after you close all Incognito windows.

62. Clicking on the “when you use our partners’ sites or apps takes you to the “HOW GOOGLE USES INFORMATION FROM SITES OR APPS THAT USE OUR SERVICES” page described above in Paragraph 20.

63. Similarly, the September 1, 2015 Chrome Privacy Notice, in effect at the start of the Class Period, explains:

Sites that you visit using Chrome will automatically receive [standard log information](#) similar to that received by Google. These sites may also set their own [cookies](#) or store site data on your system. You can restrict [cookies](#)<sup>7</sup> and other site data in Chrome's preferences page.

\*\*\*

If you use Chrome in [incognito mode](#)<sup>8</sup> or guest mode, it will not transmit any pre-existing [cookies](#) to sites that you visit. Sites may deposit new [cookies](#) on your system while you are in these modes; these [cookies](#) will only be temporarily stored and transmitted to sites while you remain in incognito / guest mode. They will be deleted when you close the browser, close all open incognito windows or exit guest mode.

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Incognito mode is useful if you would still like to have access to information from your existing profile, such as suggestions based on your browsing history, while you are browsing. Guest mode is useful if you would prefer to begin a browsing session without seeing information from any existing profiles. In either of these modes, Chrome will not store basic browsing history information such as URLs, cached page text, or IP addresses of pages linked from the websites you visit. It will also not store snapshots of pages that you visit or keep a record of your downloads (although this information could still be stored elsewhere on your system, e.g. in a list of recently opened files). New [cookies](#) received in these modes will not be saved after you close your browser, close all open incognito windows or exit guest mode. You can see when you are in incognito / guest mode because the incognito icon appears in the top corner of your browser; in some cases the border of your browser window may also change color.

## 2. Google Chrome Privacy Whitepaper

64. Since June 21, 2016, the Chrome Privacy Whitepaper was linked to the Chrome Privacy Notice. The Google Chrome Privacy Whitepaper, publicly available at <https://www.google.com/chrome/privacy/whitepaper.html>, describes Incognito Mode similarly to the Chrome Privacy Notice.

65. The current version, which was last updated on February 4, 2021, explains:

Incognito mode in Chrome is a temporary browsing mode. It ensures that you don't leave browsing history and cookies on your computer. The browsing history and cookies are

<sup>7</sup> This hyperlink directs users to the cookie definition discussed in paragraph 57 above.

<sup>8</sup> This hyperlink directs users to the “Browse in private” page discussed in paragraph 54 above.

1 deleted only once you have closed the last incognito window. Incognito mode cannot make  
2 you invisible on the internet. Websites that you navigate to may record your visits. Going  
3 incognito doesn't hide your browsing from your employer, your internet service provider,  
4 or the websites you visit.

66. Prior versions of the Google Chrome Privacy Whitepaper have the same language.

Attached as **Exhibit 19** is a true and correct copy of the Google Chrome Privacy Whitepaper, last  
modified on September 30, 2020, that Google produced as GOOG-CABR-00048617. Attached as  
**Exhibit 20** is a true and correct copy of the Google Chrome Privacy Whitepaper, last modified on  
April 7, 2020, that Google produced as GOOG-CABR-00087981. Attached as **Exhibit 21** is a true  
and correct copy of the Google Chrome Privacy Whitepaper, last modified on March 12, 2019,  
that Google produced as GOOG-CABR-00000066. Attached as **Exhibit 22** is a true and correct  
copy of the Google Chrome Privacy Whitepaper, last modified on January 29, 2019, that Google  
produced as GOOG-CABR-00000122. Attached as **Exhibit 23** is a true and correct copy of the  
Google Chrome Privacy Whitepaper, last modified on December 5, 2018, that Google produced as  
GOOG-CABR-00000150. Attached as **Exhibit 24** is a true and correct copy of the Google  
Chrome Privacy Whitepaper, last modified on November 11, 2018, that Google produced as  
GOOG-CABR-00000290. Attached as **Exhibit 25** is a true and correct copy of the Google  
Chrome Privacy Whitepaper, last modified on September 4, 2018, that Google produced as  
GOOG-CABR-00000262. Attached as **Exhibit 26** is a true and correct copy of the Google  
Chrome Privacy Whitepaper, last modified on July 19, 2018, that Google produced as GOOG-  
CABR-00000455. Attached as **Exhibit 27** is a true and correct copy of the Google Chrome  
Privacy Whitepaper, last modified on April 17, 2018, that Google produced as GOOG-CABR-  
00000430. Attached as **Exhibit 28** is a true and correct copy of the Google Chrome Privacy  
Whitepaper, last modified on March 6, 2018, that Google produced as GOOG-CABR-00000505.

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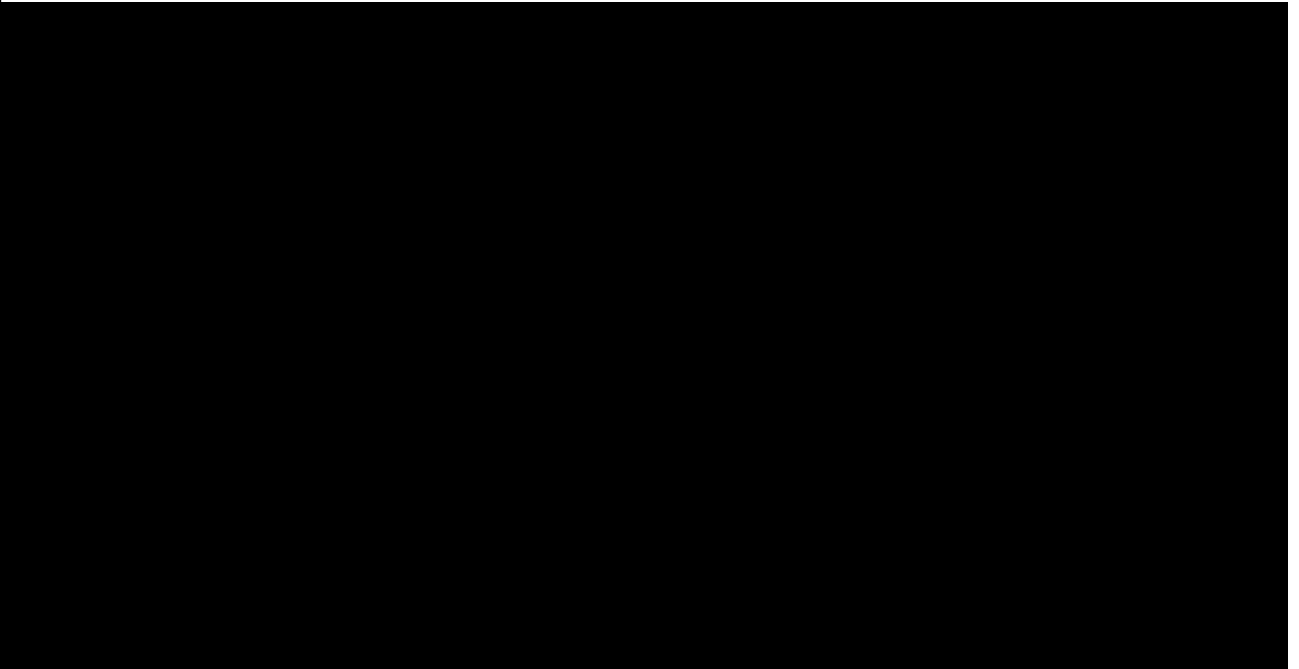
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1           67. The Google system that measures these statistics shows that the English language  
2 version of the Chrome Privacy Whitepaper available at /chrome/privacy/whitepaper.html?hl=en-  
3 US was viewed nearly [REDACTED] times between October 3, 2018 (the date Google started  
4 collecting this data) to July 27, 2022 (the date the data was pulled):



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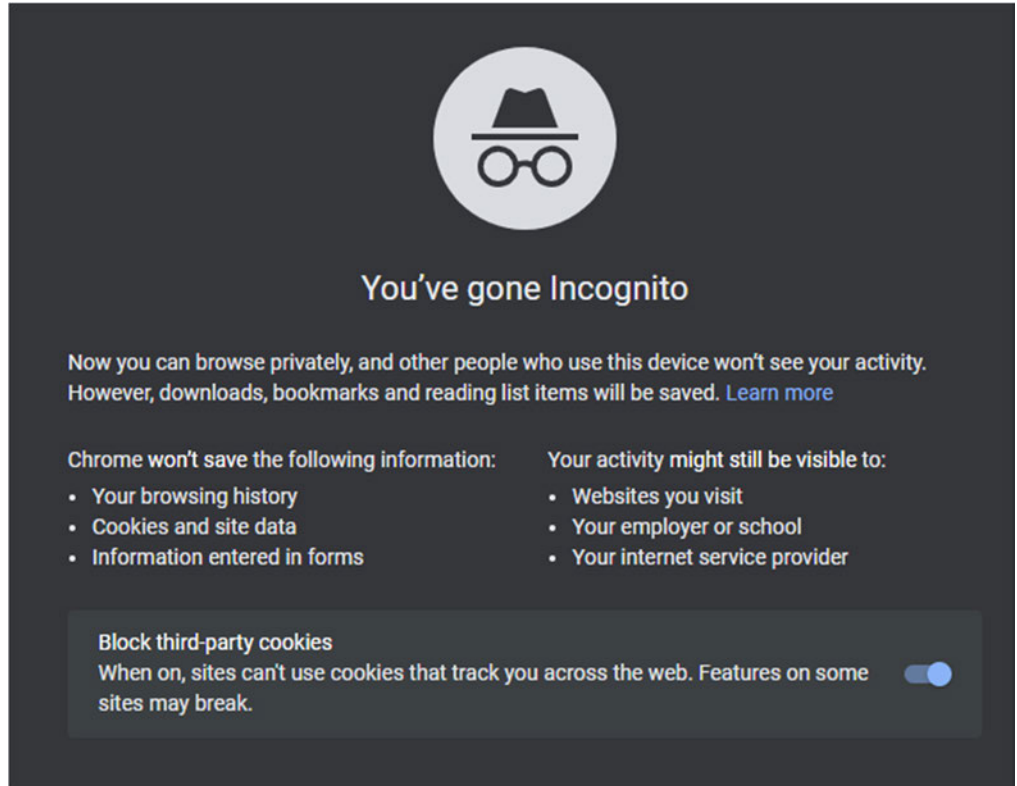
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### 3. The Incognito Screen

68. In addition to the description of Incognito mode in the Chrome Privacy Notice and the Chrome Privacy Whitepaper, the Incognito Screen that appears each time a user opens an Incognito window states:



69. The Incognito screen explains that “[n]ow you can browse privately, and other people who use this device won’t see your activity.”

70. It also states that Chrome won’t save the following information: “[Y]our browsing history[,] Cookies and site data[, and ] information entered in forms.”

71. It also makes clear that Incognito mode is not private from entities on the web because that “[y]our activity might still be visible to,” among other things, “[w]ebsites you visit.”

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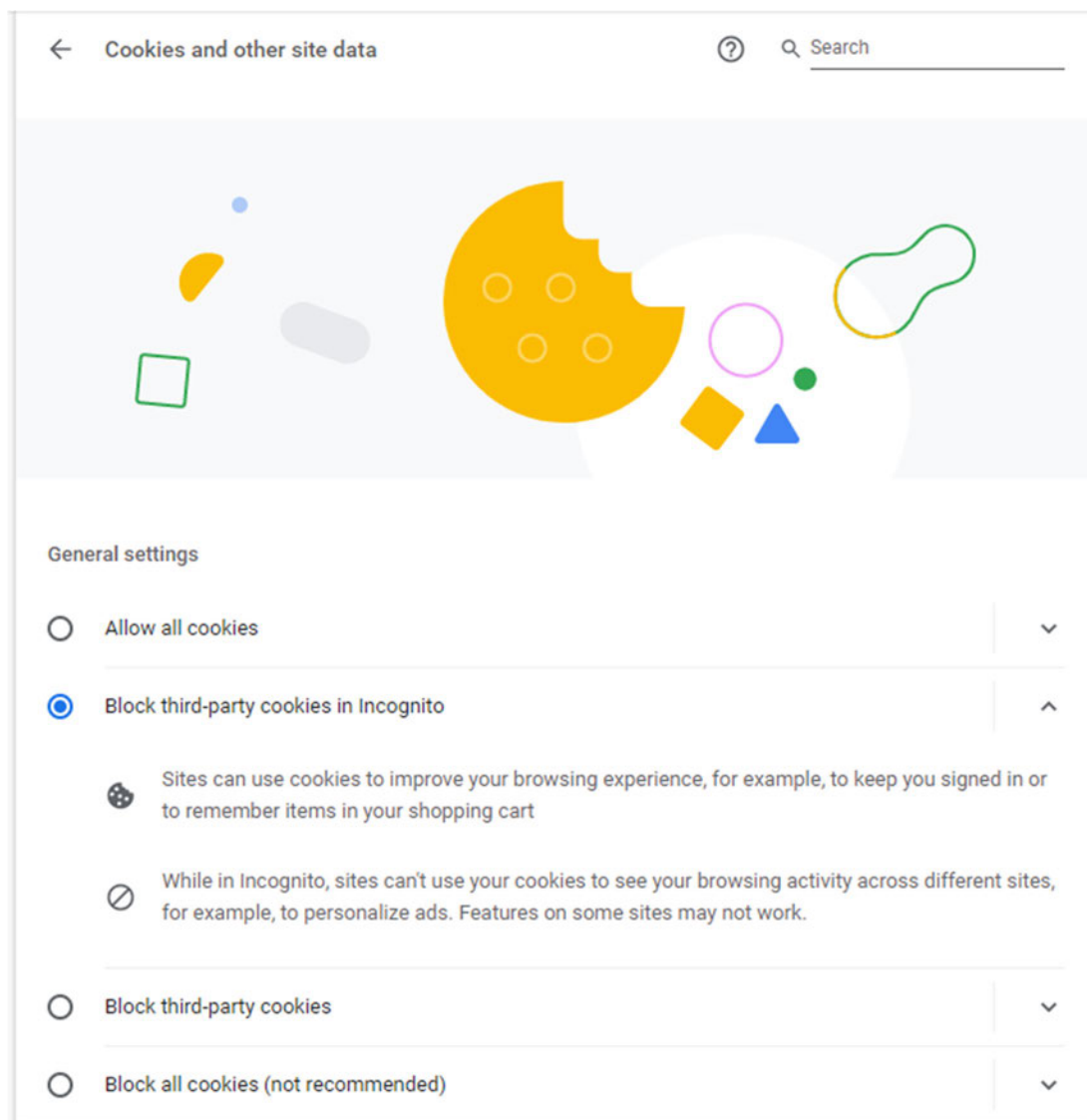
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72. I am informed that the screen itself was largely the same throughout the class period with one exception: In May 2020, Google announced the addition of the “Block third-party cookies” box. The box was slowly rolled out to Incognito users throughout June and July 2020. Prior to that date, although third-party cookies were not blocked by default, users could still navigate to their cookies settings at <chrome://settings/cookies> and block third-party cookies:



73. Additionally, the “Learn more” hyperlink took users to different pages throughout the class period. From approximately August 2016 until approximately July 2017, the “Learn more” hyperlink took users to the “Browse in private” help center page, described above in paragraph 58. Between July 2017 and May 2020, the “Learn more” hyperlink took users to the “How Private Browsing Works in Chrome” help page, described above in paragraph 59.

1 Beginning in May 2020, the “Learn more” hyperlink has taken users to the “How Chrome  
2 Incognito keeps your browsing private” help page. Attached as **Exhibit 29** is a true and correct  
3 copy of the Help Center Article titled “How Chrome Incognito keeps your browsing private,”  
4 which is also publicly available at <https://support.google.com/chrome/answer/9845881>. The  
5 “Learn more” link has been clicked more than [REDACTED] times between August 1, 2016 (the  
6 month the “Browse in private” help page was created) to January 1, 2022 (the most recent statistic  
7 as of the date the data was pulled) by U.S.-based users. Attached hereto as Exhibit 17 is a true and  
8 correct copy of an export from the Google system that measures these statistics that Google  
9 produced as GOOG-CABR-05876957.

10 74. The “How Chrome Incognito keeps your browsing private” page explains that  
11 “Incognito mode can help keep your browsing private from other people who use your device.” It  
12 also explains “[w]hat Incognito mode does” including “Browsing in Incognito mode means your  
13 activity data isn’t saved on your device, or to a Google Account you’re not signed into” and  
14 “Chrome doesn’t tell websites, including Google, when you’re browsing privately in incognito  
15 mode.” It further explains “[w]hat Incognito mode doesn’t do” including:

- 16 • Prevent you from telling a website who you are. If you sign in to any website in Incognito  
17 mode, that site will know that you’re the one browsing and can keep track of your activities  
18 from that moment on.
- 19 • Prevent your activity or location from being visible to the websites you visit, your school,  
20 employer, or your Internet Service provider.
- 21 • Prevent the websites you visit from serving ads based on your activity during an Incognito  
22 session. After you close all Incognito windows, websites won’t be able to serve ads to you  
23 based on your signed-out activity during that closed session.

24 75. The “How Chrome Incognito keeps your browsing private” help page was viewed  
25 more than [REDACTED] times between May 1, 2020 (the month the page was created) to January 1,  
26 2022 (the most recent statistic as of the date the data was pulled) by U.S.-based users. Attached  
27 hereto as Exhibit 17 is a true and correct copy of an export from the Google system that measures  
28 these statistics that Google produced as GOOG-CABR-05876957.

76. Google similarly explains in the “Search & browse privately” help page that “[i]f  
you want to search the web without saving your search activity to your account, you can use

1 private browsing mode in a browser (like Chrome or Safari).” It also explains that “Private  
2 browsing works differently depending on which browser you use,” but it “usually  
3 means...[c]ookies are deleted after you close your private browsing window or tab” and “[y]ou  
4 might see search results and suggestions based on your location or other searches you’ve done  
5 during your current browsing session.” Finally, it notes: “Important: If you sign in to your Google  
6 Account to use a web service like Gmail, your searches and browsing activity might be saved to  
7 your account.” Attached as **Exhibit 30** is a true and correct copy of the Help Center Article titled  
8 “Search & browse privately,” which is also publicly available at  
9 <https://support.google.com/websearch/answer/4540094?>. The “Search & browse privately” help  
10 page was viewed fewer than [REDACTED] times between August 1, 2016 (the month the page was  
11 created) to January 1, 2022 (the most recent statistic as of the date the data was pulled) by U.S.-  
12 based users. Attached hereto as Exhibit 17 is a true and correct copy of an export from the Google  
13 system that measures these statistics that Google produced as GOOG-CABR-05876957.

14 77. The Search & browse privately page was not linked from the Privacy Policy until  
15 May 25, 2018. Before that time, it could be found in the Google Help Center, and was linked from  
16 other Help Center articles, such as the “View & control activity in your account” page, which is  
17 publicly available at <https://support.google.com/accounts/answer/7028918>. Beginning with the  
18 May 25, 2018 Privacy Policy, the following sentence was added:

19 We use the information we collect to customize our services for you, including providing  
20 recommendations, personalized content, and [customized search results](#).

21 78. Clicking on the blue “customized search results” text displayed the following text:

22 For example, when you’re signed in to your Google Account and have the Web & App  
23 Activity control enabled, you can get more relevant search results that are based on your  
24 previous searches and activity from other Google services. You can [learn more here](#). You  
may also get customized search results even when you’re signed out. If you don’t want this  
level of search customization, you can [search and browse privately](#) or turn off [signed-out  
search personalization](#).

25 79. Clicking on the blue “search and browse privately” text would take users to the  
26 “Search & browse privately” page discussed in the preceding paragraphs.  
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1           **E. Google's Agreements With Analytics and Ad Manager Customers Require**  
2           **That Websites Disclose The Use Of Those Services**

3           80. Google's agreements with websites that use its services require those websites to  
4 make certain disclosures.

5           81. For example, the Google Analytics Terms of Service requires websites to:

6 post a Privacy Policy and that Privacy Policy must provide notice of Your use of cookies,  
7 identifiers for mobile devices (e.g., Android Advertising Identifier or Advertising Identifier  
8 for iOS) or similar technology used to collect data. You must disclose the use of Google  
9 Analytics, and how it collects and processes data. This can be done by displaying a  
10 prominent link to the site "How Google uses data when you use our partners' sites or  
11 apps", (located at [www.google.com/policies/privacy/partners/](http://www.google.com/policies/privacy/partners/), or any other URL Google  
12 may provide from time to time).

13           82. Attached as **Exhibit 31** is a true and correct copy of the Google Analytics Terms of  
14 Service, which is also publicly available at  
15 <https://marketingplatform.google.com/about/analytics/terms/us/>. The link  
16 [www.google.com/policies/privacy/partners/](http://www.google.com/policies/privacy/partners/) is hyperlinked to the "How Google Uses Information  
17 From Sites and Apps That Use Our Services," attached as Exhibit 1 and excerpted in Paragraph  
18 20, above.

19           83. Google Analytics also has a Privacy Disclosures Policy that requires websites to  
20 "disclose the use of Google Analytics and how it collects and processes data." Attached as  
21 **Exhibit 32** is a true and correct copy of the Privacy Disclosures Policy, which is also publicly  
22 available at <https://support.google.com/analytics/answer/7318509>.

23           84. Similarly, Google's Ad Manager Publisher policies require websites that use  
24 Google Ad Manager to:

25 have and abide by a privacy policy that clearly discloses any data collection, sharing and  
26 usage that takes place on any site, app, email publication or other property as a  
27 consequence of your use of Google products. The privacy policy must disclose to users  
28 that third parties may be placing and reading cookies on your users' browsers, or using web  
beacons to collect information as a result of ad serving on your website. To comply with  
this disclosure obligation with respect to Google's use of data, you have the option to  
display a prominent link to [How Google uses data when you use our partners' sites or  
apps](#).

85. Attached as **Exhibit 33** is a true and correct copy of Google's Ad Manager  
Publisher policies, which is also publicly available at  
[https://support.google.com/admanager/answer/10502938?visit\\_id=637746843701355304-](https://support.google.com/admanager/answer/10502938?visit_id=637746843701355304-)

1 [1137658824&rd=1](#). Relevant portions of the page a user would go to if they clicked on the  
2 hyperlink “[How Google uses data when you use our partners’ sites or apps](#)” are displayed above in  
3 paragraph 20 and the full page is attached as Exhibit 1.

4 86. Websites can comply with these rules in many ways. For example, the Drudge  
5 Report Website (a website I am informed Plaintiff Castillo has represented he has visited) Cookie  
6 Policy explains that:

7 We use Google Analytics cookies to collect aggregate statistical data about how visitors  
8 use the Sites so that we can improve the user experience and serve up the content our  
9 visitors find most useful. Google Analytics cookies store information such as what pages  
10 users visit, how long they are on the Sites, how they arrived at the Sites, and what they  
11 click on. To learn more about Google’s practices and to opt out, please visit  
12 <http://www.google.com/policies/privacy/partners/>, [https://developers.google.com/](https://developers.google.com/analytics/devguides/collection/analyticsjs/cookie-usage)  
13 <https://tools.google.com/dlpage/gaoptout...> We may partner with certain third parties to  
14 deliver advertising that we believe may interest you based on your activity on our Sites and  
15 other websites over time. ...Google Ads [\_\_gads]...is a cookie associated with Google Ads,  
16 a digital advertising service. To learn more about Google’s practices and to opt out, please  
17 visit Ads Settings.

18 87. Attached as **Exhibit 34** is a true and correct copy of the Drudge Report Website  
19 Cookie Policy, which is also publicly available at which is publicly available at  
20 <https://www.drudgereport.com/privacy/cookie-policy/>.

21 88. Plaintiffs’ law firm Boies Schiller Flexner LLP has a Privacy and Cookie Policy  
22 that discloses that:

23 Non-personal Information. Like many websites, we may collect certain technical  
24 information about your use of the website and generally this is not information the Firms  
25 could use to identify you without reference to other information. For example, we may  
26 collect your internet protocol (IP) address, browser type, the identity of your internet  
27 service provider (ISP), the number and duration of page visits, how you were directed to  
28 the website, and the number of clicks you make when you use the website....We may use  
third parties, such as Google and our website host, to provide analytics services based on  
this data.

89. Attached as **Exhibit 35** is a true and correct copy of the Boies Schiller Flexner LLP  
Privacy and Cookie Policy, which is also publicly available at which is publicly available at  
<https://www.bsfllp.com/privacy-policy.html>.

90. The Privacy Policy of another of Plaintiffs’ law firms, Morgan & Morgan,  
discloses that:

We and our third party providers may use cookies and other technologies such as log files, tracking pixels, and analytic tools and services to collect information (including Personal Information) automatically from you. Such information includes your IP address, location information, the type of the web browser and operating system you use, browsing activities, usage information, and any other information that your web browsing software or Internet Service Provider automatically provides to our Services.... We may use third party analytics tools, such as Google Analytics and Mouseflow, in order to better understand your use of our Services and how we can improve them. These tools collect information sent by your browser or mobile device, including the pages you visit and other usage information. For more information regarding how Google collects, uses, and shares your information please visit <http://www.google.com/policies/privacy/partners/>.

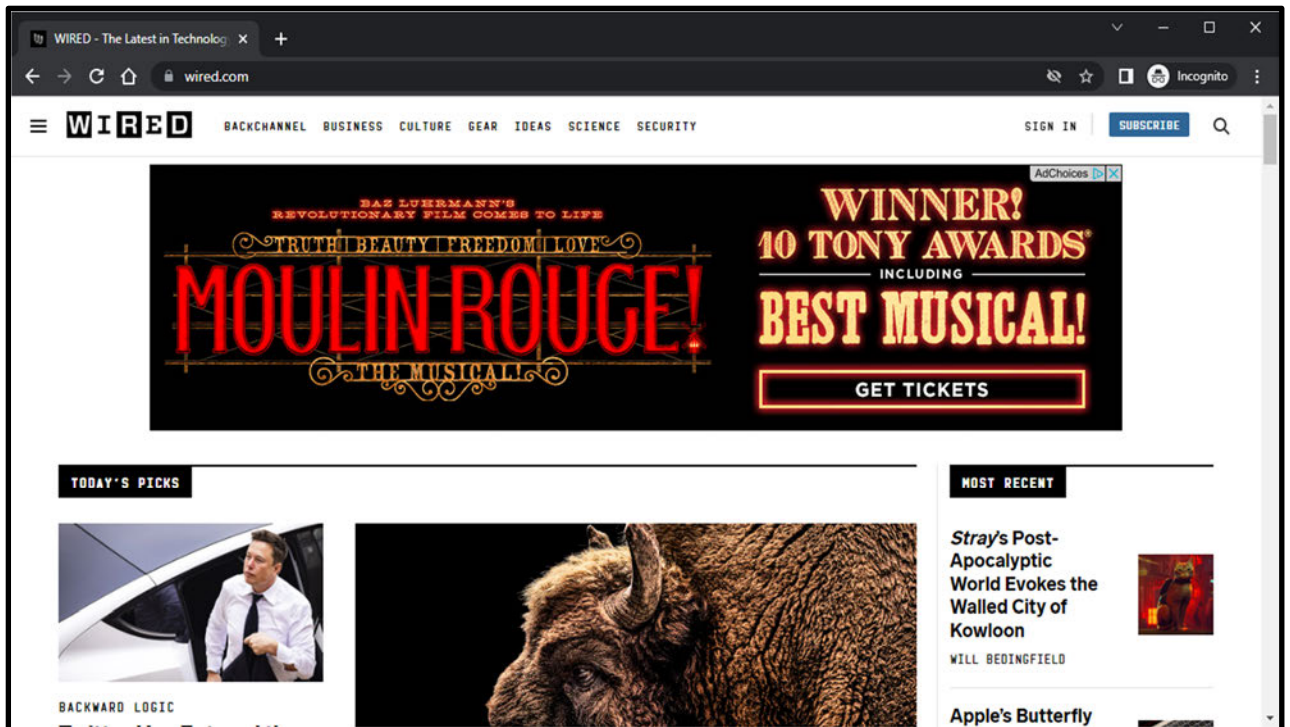
91. Attached as **Exhibit 36** is a true and correct copy of the Morgan & Morgan Privacy Policy, which is also publicly available at which is publicly available at <https://www.forthethepeople.com/privacy-policy/>. The link at the end of the paragraph is hyperlinked to the “How Google Uses Information From Sites and Apps That Use Our Services,” attached as Exhibit 1 and excerpted in Paragraph 20, above.

92. In addition to privacy and cookie policies, websites may also chose to include additional disclosures in a “pop-up.” For example, I visited Latham & Watkins’ website in Incognito mode, which is publicly available at <https://www.lw.com/>, and it had a specific Google Analytics pop-up disclosure that the user has to toggle on before Analytics is enabled:

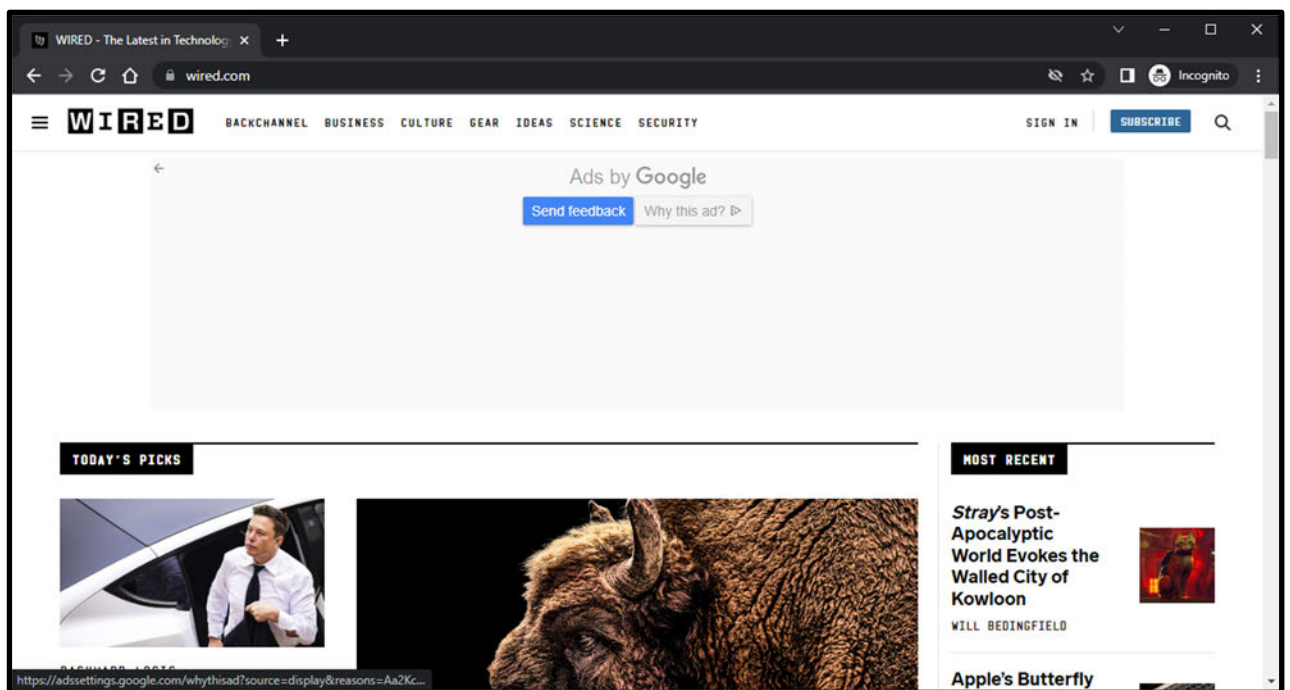




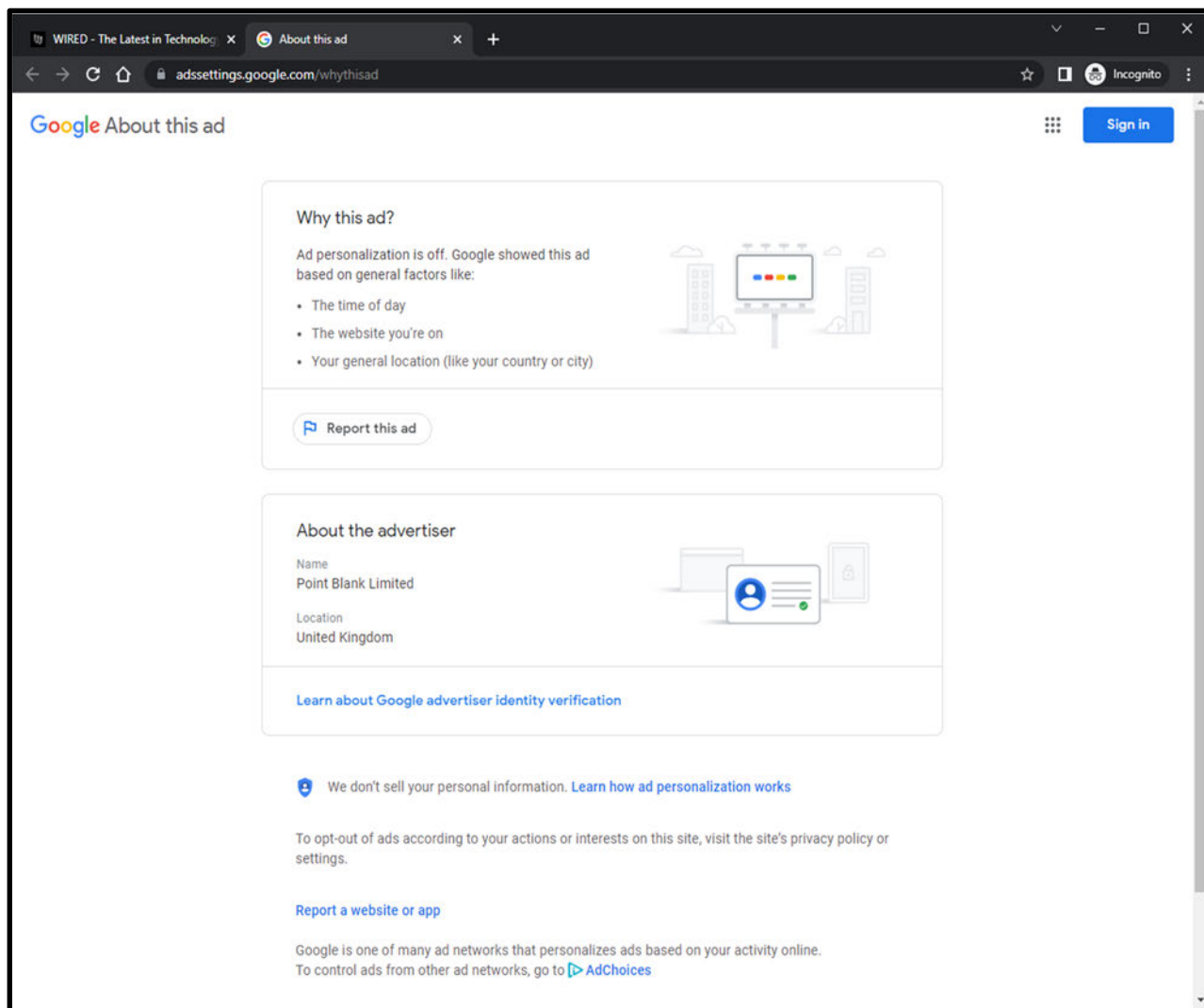
93. Additionally, when users see ads on non-Google websites, including while in a private browsing mode, the ads are accompanied by an “AdChoices” icon:



94. When clicked, users see that the ad is served through Google Ads:



1           95. Users can then click on an icon titled “Why this ad?” that provides information on  
2 what type of data Google used to serve the ad. If Ad personalization is off, this page will explain  
3 that ads are shown based on factors like “[T]he time of day,” “The website you’re on,” and “Your  
4 general location (like your country or city).”



23           96. As noted above, a user can opt out of personalized ads even if they are not signed  
24 into a Google Account by navigating to <https://adssettings.google.com>, where they can select a  
25 setting to disable “Ad personalization on the Web.”

26           97. Google also makes available help pages that explain how ad personalization works.  
27 For example, the “About Google ad personalization” help page, which is publicly available at  
28 <https://support.google.com/ads/answer/1660762>, explains:



1 Ads that Google shows can be personalized based on many factors, like the types of  
2 websites you visit or mobile apps you've installed. If ad personalization is off, ads may still  
3 use non-personal data, such as your general location or the topics on the website or app  
4 you're looking at.

5 98. Additionally, the “Why you’re seeing an ad” help page, publicly available at  
6 <https://support.google.com/ads/answer/1634057>, includes many explanations as to why a user may  
7 see an ad, including: (1) the user’s general location; (2) user activity, like “[y]our current search  
8 query,” “[p]revious search activity,” “[y]our previous interactions with ads,” and “[t]ypes of  
9 websites you visit,”; and (3) other info, such as “time of day” and “[i]nfo you gave to an  
10 advertiser, like if you signed up for a newsletter with your email address.”

11 **F. Chrome’s Developer Tools**

12 99. I am informed that Plaintiffs have described the process through which Google  
13 receives the data at issue through its services installed on third-party websites as “surreptitious[.]”  
14 and as being conducted in “secret.” *See, e.g.*, TAC ¶¶ 63-66, 68-69, 85, 87. As described in the  
15 preceding section, there are ways that Incognito users can see, in real time, that Incognito is not  
16 blocking Google’s services. In addition, Google designed a tool that comes standard on Chrome  
17 that allows Chrome users to view, on each website they visit, a list of providers of third-party web-  
18 services the website is using, including Google Services such as Google Ad Manager and Google  
19 Analytics, and which are receiving data when the user visits those sites. To view all of the third-  
20 party scripts (including Google scripts) on a given website, a Chrome user may simply click on  
21 Chrome’s “View” tab, select Developer > Developer Tools > and then click on the Sources tab.  
22 Chrome users can access the same tool and information by right clicking on the webpage,  
23 selecting “View Page Source,” and selecting “Sources.” This feature is available in all Chrome  
24 modes including Incognito.

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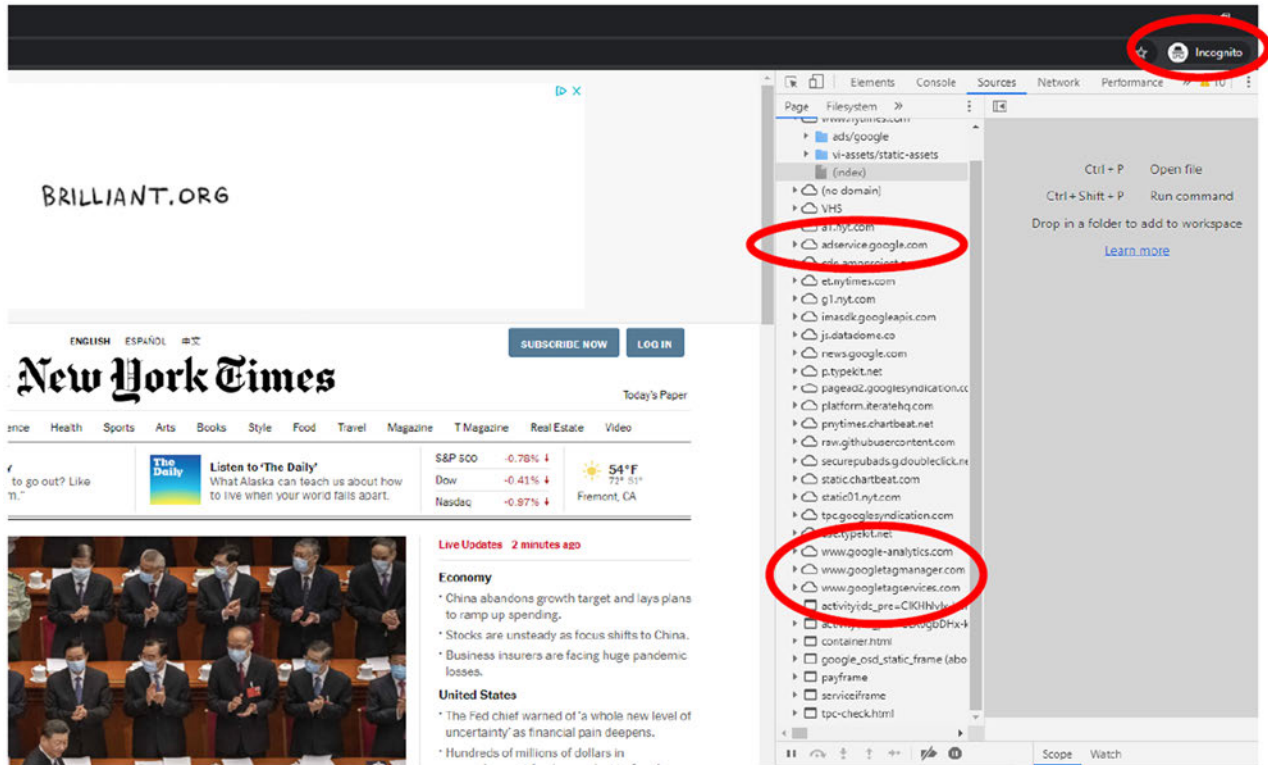
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100. Plaintiffs appear to be aware of this tool because their complaint includes a screenshot of a visit in Incognito mode to a website that uses Google services, the New York Times, while using what appears to be Chrome's Developer Tools function:



TAC ¶ 86.

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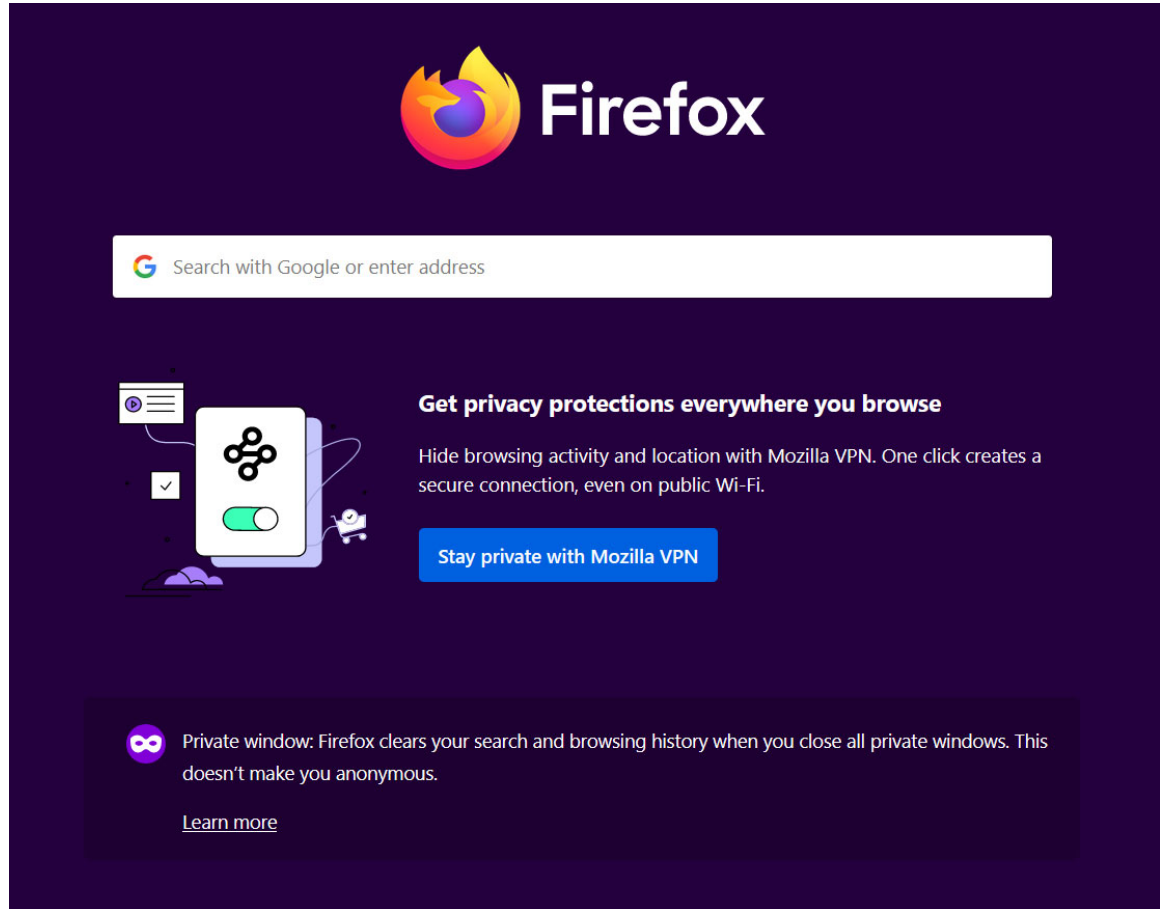
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1           **G.     Other Browsers' Disclosures**

2           101.    The Firefox private browsing screen explains that private browsing “doesn’t make  
3 you anonymous.”

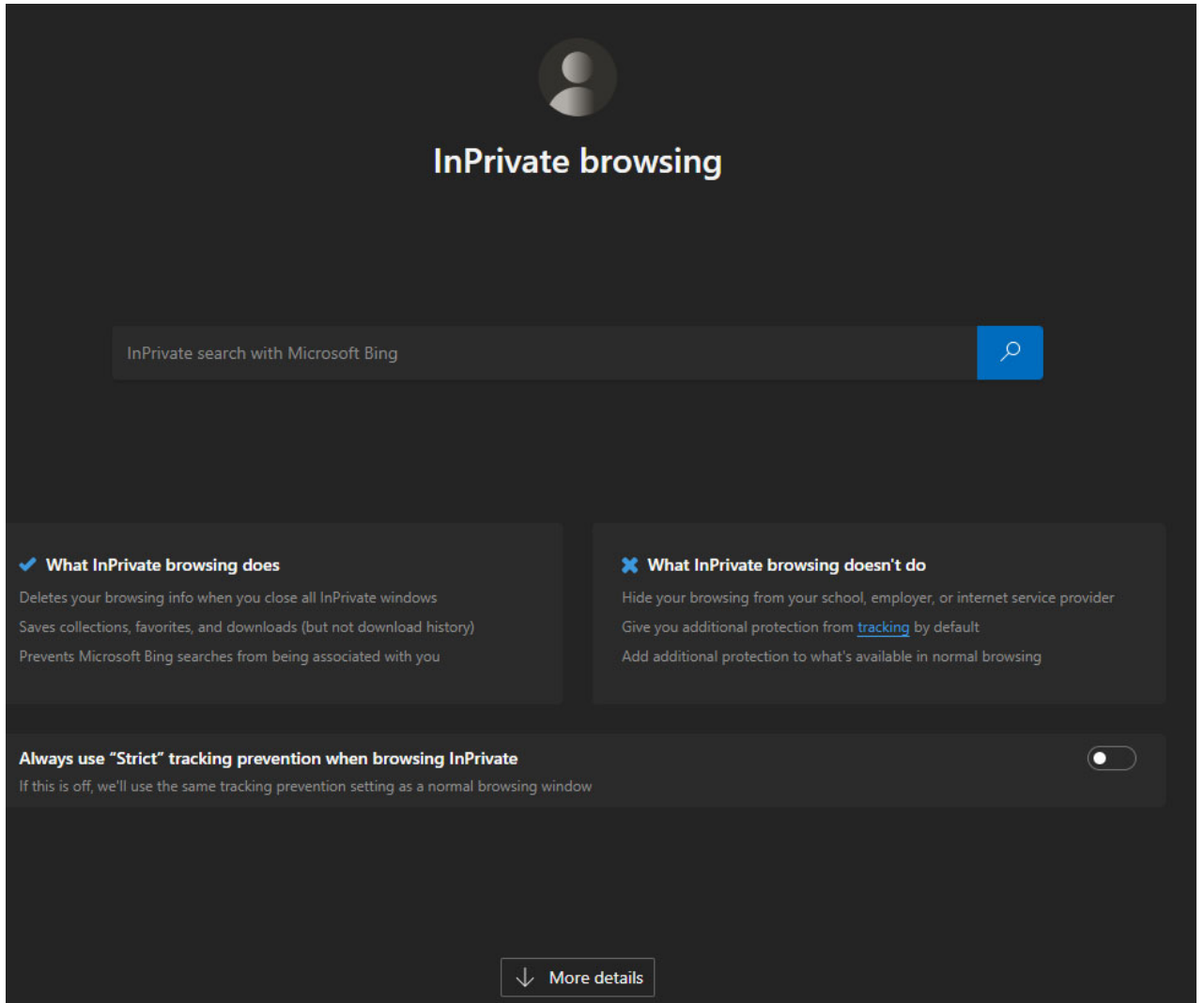


18           102.    Clicking “Learn more” takes users to a page called “Common Myths about Private  
19 Browsing.” Attached as **Exhibit 37** is a true and correct copy of the “Common Myths about  
20 Private Browsing” page, which is publicly available at [https://support.mozilla.org/en-](https://support.mozilla.org/en-US/kb/common-myths-about-private-browsing?as=u&utm_source=inproduct)  
21 [US/kb/common-myths-about-private-browsing?as=u&utm\\_source=inproduct](https://support.mozilla.org/en-US/kb/common-myths-about-private-browsing?as=u&utm_source=inproduct). This page explains  
22 that “Private Browsing is a useful feature of Firefox, but only if you understand the protection it  
23 offers. It helps you obscure your online activity from other people who use Firefox on your  
24 computer, but does not make you invisible online” and that “Private Browsing does not mask your  
25 identity or activity online. Websites and Internet service providers can still gather information  
26 about your visit, even if you are not signed in.”

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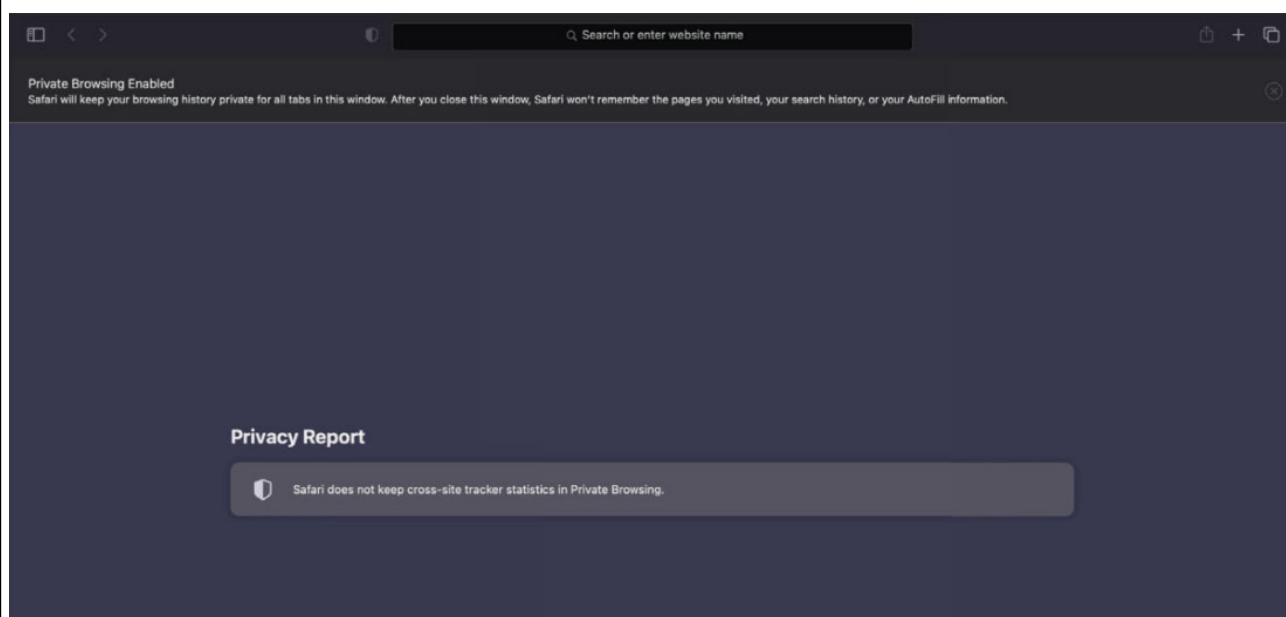
1           103. Similarly, Microsoft Edge's private browsing page explains that private browsing  
2 does not "[h]ide your browsing from your school, employer, or internet service providers[;] [g]ive  
3 you additional protection from tracking by default[;] [or] [a]dd additional protection to what's  
4 available in normal browsing."



22           104. A Microsoft Edge help page also provides details of "[w]hat data is collected or  
23 stored, and why" and provides instructions to limit the amount of data collected. Attached as  
24 **Exhibit 38** is a true and correct copy of the "Microsoft Edge, browsing data, and privacy" page,  
25 which is publicly available at [https://support.microsoft.com/en-us/windows/microsoft-edge-](https://support.microsoft.com/en-us/windows/microsoft-edge-browsing-data-and-privacy-bb8174ba-9d73-dcf2-9b4a-c582b4e640dd)  
26 [browsing-data-and-privacy-bb8174ba-9d73-dcf2-9b4a-c582b4e640dd](https://support.microsoft.com/en-us/windows/microsoft-edge-browsing-data-and-privacy-bb8174ba-9d73-dcf2-9b4a-c582b4e640dd).  
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1           105. Another Microsoft help page notes that “[w]ebsites can still personalize content for  
2 you during your InPrivate browsing session because cookies and other site permissions aren’t  
3 deleted until you close all InPrivate windows.” Attached as **Exhibit 39** is a true and correct copy  
4 of the “Browse InPrivate in Microsoft Edge” page, which is publicly available at  
5 [https://support.microsoft.com/en-us/microsoft-edge/browse-inprivate-in-microsoft-edge-](https://support.microsoft.com/en-us/microsoft-edge/browse-inprivate-in-microsoft-edge-cd2c9a48-0bc4-b98e-5e46-ac40c84e27e2)  
6 [cd2c9a48-0bc4-b98e-5e46-ac40c84e27e2](https://support.microsoft.com/en-us/microsoft-edge/browse-inprivate-in-microsoft-edge-cd2c9a48-0bc4-b98e-5e46-ac40c84e27e2).

7           106. And Safari’s private browsing pop-up explains that “[a]fter you close this window,  
8 Safari won’t remember the pages you visited, your search history, or your Autofill information.”



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1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct to the best of my knowledge. Executed in Mountain View, California  
3 on August 5, 2022.

DocuSigned by:

*Jonathan McPhie*

844C699DCB8C4D1

Jonathan McPhie